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TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods and
Services, and Commodities
Expert Meeting on the Impact of Anti-Dumping and
Countervailing Actions
Geneva, 4-6 December 2000
Item 2 of the provisional agenda

PROVISIONAL AGENDA AND ANNOTATIONS

I. Provisional agenda

1. Election of officers

2. Adoption of the agenda and organization of work

3. The impact of anti-dumping and countervailing duty actions on the trade of member States, in particular developing countries

4. Main issues and areas of concern that need to be addressed in the light of concrete experiences presented by national experts

5. Adoption of the outcome of the Meeting

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II. Annotations to the provisional agenda

Item 1: Election of officers

1: It is recommended that the Expert Meeting elect a Chairperson and a Vice-Chairperson-cum-Rapporteur.

Item 2: Adoption of the agenda and organization of work

2. The provisional agenda for the Expert Meeting is reproduced in section I above. The provisional schedule of meetings for the three days is attached to this document.

3. At the consultations of the President of the Trade and Development Board with the Bureau, coordinators and interested delegations (31 March 2000), member States decided to convene the Expert Meeting on the Impact of Anti-Dumping and Countervailing Duties Actions. The decision was made in accordance with the UNCTAD X Plan of Action (TD/386), paragraph 132, which states – "UNCTAD's work should relate first to analysis and, where appropriate, on the basis of the analysis, contribute to consensus-building on: impact of anti-dumping and countervailing duties actions".

4. The meeting will have two substantive segments.

Item 3: The impact of anti-dumping and countervailing duty actions on the trade of member States, in particular developing countries

5 The discussions under this substantive item will be aimed at assisting UNCTAD member States to have a better understanding of the impact of anti-dumping and countervailing duties actions. The analysis could be drawn from the secretariat's background note and country-specific experience papers and or sector-specific cases studies to be presented by national experts which would encompass: the examination of the current trends in the application of anti-dumping and countervailing measures; and the assessment of the impact of anti-dumping and countervailing measures on the trade of member States, in particular developing countries.

Item 4: Main issues and areas of concern that need to be addressed in the light of concrete experiences presented by national experts

6. Based upon the deliberations under item 3, experts will focus on the identification of possible ways and means by which the adverse effects of anti-dumping and countervailing duty actions on trade, particularly that of developing countries, could be reduced.

Documentation

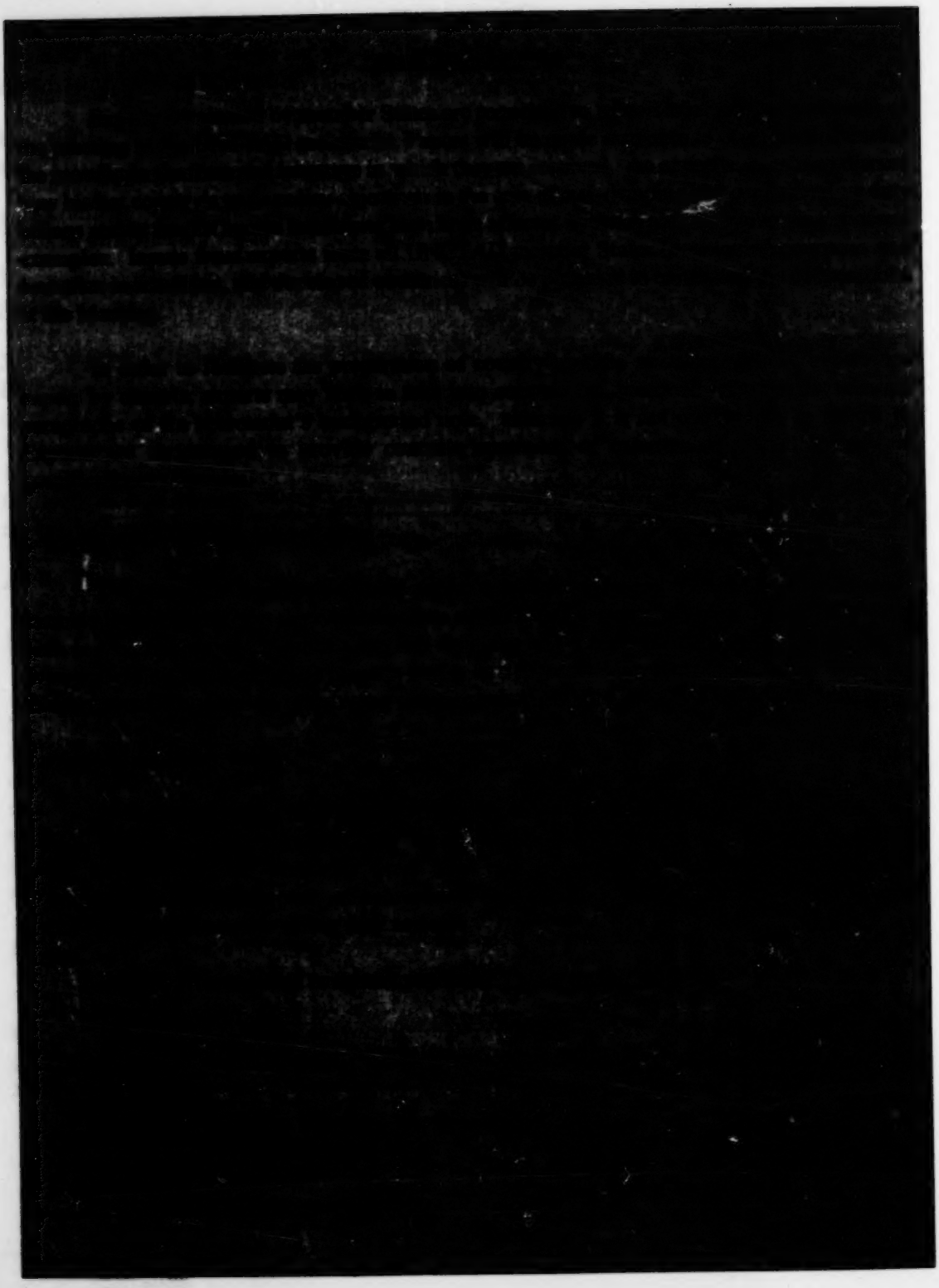
TD/B/COM.1/EM.14/2 Impact of anti-dumping and countervailing duty actions

Item 5: Adoption of the outcome of the Meeting

7. The Expert Meeting will adopt its outcome, which will be assessed by participating member States before being submitted to the Commission on Trade in Goods and Services, and Commodities in February 2001. The final report will be compiled under the authority of the Chairperson after the conclusion of the Meeting.

SCHEDULE OF THE MEETING

Day 1 (4 December 2000)	Day 2 (5 December 2000)	Day 3 (6 December 2000)
(10 a.m.- 1 p.m.) **Plenary** Opening statement Item 1: Election of officers Item 2: Adoption of the agenda and organization of work **Informals** Item 3: The impacts of anti-dumping and countervailing duty actions on the trade of member States, in particular developing countries	*(10 a.m.- 1 p.m.)* **Informals (continued)** Item 3: (continued) Item 4: Main issues and areas of concern that need to be addressed in the light of concrete experiences presented by national experts	*(10 a.m.- 1 p.m.)* **Informals (continued)** Item 4: (continued)
(3 p.m.- 6 p.m.) **Informals (continued)** Item 3: (continued)	*(3 p.m.- 6 p.m.)* **Informals (continued)** Item 4: (continued)	*(3 p.m.- 6 p.m.)* **Plenary** (closing) Item 5: Adoption of the outcome



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TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods and
Services, and Commodities
Expert Meeting on the Impact of Anti-Dumping and
Countervailing Actions
Geneva, 4-6 December 2000
Items 3 and 4 of the provisional agenda

IMPACT OF ANTI-DUMPING AND COUNTERVAILING DUTY ACTIONS

Background note by the UNCTAD secretariat

Executive Summary

Anti-dumping and countervailing duty actions are legitimate measures permitted under the GATT/WTO rules, and are now the most frequently used trade remedies. Over the past decade, 2,500 anti-dumping actions and almost 300 countervailing duty actions have been initiated and notified to the GATT/WTO. The strengthening of the multilateral disciplines on safeguards — including the prohibition and elimination of voluntary export restraints and the commitments to phase out the Multi-Fibre Arrangement (MFA) quotas under the Agreement on Textiles and Clothing (ATC) — appears to have provoked an increasing resort to anti-dumping measures. Certain countries and product sectors, such as steel and textiles, have been targeted more than others.

At the same time, there has been an increasing resort to anti-dumping measures by non-traditional users — particularly developing countries — many of which have introduced anti-dumping and countervailing legislation since the entry into force of the WTO Agreements.

Developing countries continue to be the main targets of anti-dumping measures. This has the effect of creating instability and uncertainty for their exports, which has resulted in reductions in trade volumes and market shares for their goods.

The increased resort to anti-dumping measures and the rising number of disputes related to these measures, have prompted many countries, including several developing countries, to call for improvements in the application of these measures. This note identifies some major issues and areas of concern that have arisen in the ongoing debate on anti-dumping and countervailing measures which could be addressed by experts in the light of their concrete experiences.

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INTRODUCTION

1. The Bangkok Plan of Action (TD/386), in paragraph 132, provides that UNCTAD's work in the area of market access should relate first to analysis and, where appropriate — on the basis of the analysis — contribute to consensus-building, including on the impact of anti-dumping and countervailing actions. At the consultations of the President of the TDB with the Bureau, coordinators and interested delegations on 31 March 2000, it was decided to convene an Expert Meeting on the "Impact of Anti-Dumping and Countervailing Actions". This meeting will provide the opportunity for expert analysis of the major issues deriving from the application of anti-dumping (AD) and countervailing duties (CVD) measures, which in turn would contribute to consensus-building as to possible actions in this regard. This background note highlights some of the main areas of concern in the ongoing debate on the application of AD and CVD actions that the experts may wish to address based on their concrete experiences.

2. Leading economists have pointed out that the criteria used to justify anti-dumping actions make no economic sense, as they do not offer a basis for Governments to identify those interventions that would provide greater benefits than costs to the domestic economy.[1] However, as no country is proposing at this time that anti-dumping systems be abolished, the overall issue concerning the economic logic of anti-dumping duties would seem to be beyond the scope of the discussion at the expert meeting.

3. Anti-dumping duties (conceived in Canada at the beginning of the nineteenth century) were originally intended to deal with a situation where production was seen as an activity which essentially took place within national frontiers. However, the increasing globalization of production — whereby components and service inputs and assembly operations involved in the production of a traded product take place in different countries/locations — has changed the strategic role of anti-dumping actions. In the context of globalization, anti-dumping actions can represent strategic interventions to protect the interests of national firms, regardless of their production locations, or in competition among national firms, where they can be used to undermine the position of competitors by cutting off lower cost inputs. This has given rise to the use of "anti-circumvention" measures, to linkages with competition policy and to the use of rules of origin, which are discussed below.

1. OVERVIEW OF CURRENT TRENDS IN THE APPLICATION OF ANTI-DUMPING AND COUNTERVAILING MEASURES

A. Anti-dumping measures

4. Since the launching of the Uruguay Round, and particularly since the entry into force of the WTO Agreements, the most noticeable change in the area of anti-dumping is the number and variety of countries using AD measures. Prior to the Uruguay Round, the primary users of anti-dumping measures were developed countries, which are considered to have comparatively open and liberal markets, such as Australia, Canada, the European Union (EU) and the United States.[2]

5. Over the past decade (i.e.1990-1999), 2,483 anti-dumping cases were initiated and notified (see chart E). Of these nearly 50 per cent were initiated by the EU, Australia, the United States and Canada (see table I). In addition, non-traditional users, among them many developing countries, increasingly resorted to such measures. They accounted for 965 cases or 39 per cent of the total number of cases of anti-dumping initiated during this period. Their increasing use of such measures is due to increasing pressure on their Governments to adopt anti-dumping legislation to protect domestic industries against injury from imports following their significant reduction and elimination of tariffs and non-tariff measures during and after the Uruguay Round.

6. During the period, 1990-1994, of the 1,254 anti-dumping measures initiated, developed countries accounted for 867 cases (or 69 per cent)[3] and developing countries, including economies in transition, for 387 cases (or 31 per cent). During the first five years of operation of the WTO Agreements (i.e. 1995-1999), there were 1,229 anti-dumping initiations of which 651 (or 53 per cent) were initiated by developed countries and 578 (or 47 per cent) by developing countries, including economies in transition. As shown in charts A and B, the number of anti-dumping actions initiated by developing countries thus increased by 16 per cent in the second five-year period.

7. However, developing countries have continued to be the main targets of anti-dumping measures (see charts C and D). During the period, 1990-1994, 469 (or 37.4 per cent) of 1,254 cases were targeted at imports from developed countries compared with 785 cases (or 62.6 per cent) targeted at imports from developing countries and economies in transition. During the first five-years of operation of the WTO Agreements, 411 (33.4 per cent) of 1,229 cases were targeted at developed countries' imports and 818 (or 66.6 per cent) were applied against imports from developing countries and economies in transition.

8. During the period, 1990-1994, 97 per cent of the 1,254 cases were initiated by15 major users as follows: Australia (260), the United States (259), the European Union (183), Mexico (139), Canada (99), Brazil (67), Argentina (60), New Zealand (30), Turkey (28), Poland (24), the Republic of Korea (19), South Africa (16), India (15), Colombia (14) and Austria (9). During the first five years of operation of the WTO Agreements (i.e. 1995-1999) 20 major users accounted for 96.7 per cent of the 1,229 cases. These were: the European Union (189), India (140), the United States (132), South Africa (129), Australia (100), Argentina (96), Brazil (68), Canada (56), the Republic of Korea (41), Mexico (37), Indonesia (33), Venezuela (26), New Zealand (24), Peru (22), Egypt (21), Israel (21), Malaysia (16), Colombia (14), the Philippines (12) and Turkey (11). While the major users (such as Australia, the United States, Mexico and Canada) resorted less frequently to anti-dumping measures during 1995-1999, many non-traditional users increased their resort to these measures, including India, South Africa, Argentina, the Republic of Korea and Indonesia (see table I).

9. During the period, 1990-1994, the major targeted suppliers were China (149), the United States (105), the Republic of Korea (73), Brazil (65), Japan (63), Taiwan Province of China (52), Germany (49) and Thailand (37). During the first five years of operation of the WTO Agreements (1995-1999), the major victims of anti-dumping measures were China (159), the Republic of

Korea (98), the United States (79), Taiwan Province of China (60), Japan (58), Germany (50), India (48), Indonesia (47) and the Russian Federation (47). Over the past decade, China has been the most targeted party for anti-dumping actions, facing 12.4 per cent of the total notified cases over the past decade (see table II).

10. The United States has also become one of the major targets of anti-dumping actions by its trading partners, including many non-traditional users, accounting for 7.4 per cent of the total cases. According to the Import Administration of the United States Department of Commerce, as of 30 June 1998, United States products were subject to 163 foreign anti-dumping and countervailing duty measures initiated by 20 trading partners, including China and Taiwan Province of China.[4] Other major targets are the Republic of Korea (accounting for almost 7 per cent of the total cases), Japan (5 per cent), Taiwan Province of China (4.5 per cent), Brazil (4.3 per cent), Germany (4 per cent) and India (3.4 per cent).

11. Another interesting trend, as noted by a recent report,[5] is the increase in anti-dumping investigations by third countries against the EU as a whole, even in cases where the complaint contains allegations of dumping by companies in one or two EU member States only. The report noted that in the past, third countries used to impose anti-dumping measures on imports originating from one or several EU member States but not on the EU as a whole. In fact, the EU would become the largest target of anti-dumping actions if all the measures initiated against the individual EU member States over the past decade were added up (which would be around 380 cases or 15.5 per cent of total initiated cases).[6] In addition, there has been a rise in anti-dumping actions initiated by developing countries against other developing countries. Some of these have been the subject of WTO dispute settlement cases.[7]

12. As of 31 December 1999, there were 1,080 definitive anti-dumping duty measures (including undertakings) in force, as notified (see table III). More than 30 per cent (315 measures) of these were maintained by the United States, almost 18 percent (190) by the EU, 8 per cent (86) by South Africa, nearly 7.5 per cent (80) by Mexico, more than 7 per cent (79) by Canada and nearly 6 per cent (64) by India. These measures have mainly affected China (18.3 per cent), the EU (14.4 per cent and in most cases its individual Member States), Japan (7.6 per cent), Taiwan Province of China (5.5 per cent), the United States (more than 5 per cent), the Republic of Korea (5 per cent), Brazil (4 per cent) and India (more than 3 per cent).

B. Countervailing measures

13. Countervailing measures have been used to a lesser extent (see chart K). Over the past decade, 285 cases of countervailing duty were initiated and notified. Of these, 210 (or 74 per cent) were initiated by developed countries and 75 (26 per cent) by developing countries, including economies in transition.

14. For the period, 1990-1994, 185 cases of countervailing duty were initiated — 125 (or 68 per cent) by developed countries and 60 (or 32 per cent) by developing countries (see chart G).

The major users of countervailing duty measures were the United States (77), Australia (41), Brazil (24), Mexico (17) and Chile (14). The main targeted parties were Brazil (16), the EU (12), South Africa (10), Italy (8), Venezuela (8), China (7), Malaysia (7) and the United States (7) (see chart H). There has been a decline in the initiation of investigations of countervailing duty since the entry into force of the WTO Agreements. During the first five years of operation of the WTO, there were about 100 notified cases, most of which were initiated by the EU (33) and the United States (33) (see chart I). The main targeted parties were India (16), Italy (10), the Republic of Korea (9), EU (7), Indonesia (6), Thailand (6), Taiwan Province of China (6) and South Africa (5) (see chart J).

2. THE APPLICATION OF ANTI-DUMPING AND COUNTERVAILING MEASURES AND ITS IMPACT ON MEMBER STATES, IN PARTICULAR, DEVELOPING COUNTRIES

15. Anti-dumping and countervailing measures are legitimate trade remedies permitted under the GATT/WTO rules. However, as they can be invoked relatively easily and selectively compared to other trade measures, anti-dumping measures are now the most frequently used trade remedies. The application of anti-dumping measures has become a mechanism under which Governments can cede to strong sectoral protectionist pressures without deviating from the overall direction of their trade policy. According to a controversial 1996 OECD study, 95 per cent of anti-dumping cases are actually designed to safeguard domestic industry from increased imports, and 5 per cent are related to anti-competitive practices.[8]

A. Key sectors affected by anti-dumping and countervailing duty measures

16. Anti-dumping and countervailing measures initiated over the past decade cover a large number of tariff lines. As shown in chart F, sectors that have been most affected by anti-dumping cases are: metals and articles thereof (accounting for 727 initiations, or almost 30 per cent of the total cases); chemicals (404 initiations or16 per cent); plastics (282 initiations or 11 per cent); machinery and electrical equipment (254 initiations or 10 per cent); textiles and clothing (197 initiations or almost 8 per cent); pulp (111 initiations or 4.5 per cent); and stone, plaster and cement (91 initiations or almost 4 per cent). Chart L shows the products most targeted by countervailing measures. These are base metals (118), prepared foodstuffs (44), live animals and animal products (26), textiles (21), vegetable products (15), plastics (13) and chemical products (11). Since the strengthening of the multilateral disciplines on safeguards — including the prohibition and elimination of voluntary export restraints (VERs), and the phasing out of MFA quotas under the ATC — there has been clear evidence of an increased resort to anti-dumping and countervailing measures in particular sectors, notably steel products and textiles.

17. A recent report by Barringer and Pierce (2000)[9] pointed out that the United States steel industry over the past three decades has gone through the following different periods of protection: "voluntary restraint agreements (VRAs) from 1969 to 1974; a Trigger Price Mechanism (TMP) from 1978 to 1982; a decade of new VRAs from 1982 to 1992, and finally the most recent era of twin sets of massive anti-dumping and countervailing duty (AD/CVD)

litigation (1992-93 and 1998-99)." According to the report, after the second set of VRAs expired in March 1992, the United States steel industry filed AD/CVD petitions against virtually all flat-rolled steel products from 21 countries in June 1992, affecting US$3.5 billion in annual foreign sourcing by United States consumers. While the investigations proceeded as expected at the United States Commerce Department, the United States International Trade Commission ultimately rejected approximately half of the petitions for lack of injury. Anti-dumping and countervailing duties were imposed on the remainder. The report points out that, as of 1 August 1999, of 286 United States anti-dumping orders, 110 (or 37 per cent) were steel-related.

18. While the imposition of high AD/CVD duties on steel products cost United States consumers billions of dollars,[10] the export interests of the countries affected by these measure were also significant. According to United States trade data,[11] Argentine exports of *carbon steel wire rod* to the United States declined by 96 per cent following the issuance of the order with export volumes dropping from 68,335 net tons in 1983 to 2,756 net tons in 1997 (the year after the imposition of the duty). Exports of the same product originating from Mexico also dropped by 94 per cent — from 2,882 tons in the year preceding the imposition of the duty to 112 tons the year after. There is evidence that imports have sharply declined or ceased in numerous other cases such as *steel wire rope* from Japan and from the Republic of Korea, and *roller chain, other than bicycle,* from Japan.

Why has the steel sector become a prime target of anti-dumping and countervailing actions? Has this had a significant effect on trade?

19. According to available information,[12] during the first five years of operation of the WTO Agreements, nearly 20 per cent of the anti-dumping measures initiated by the EU were related to textiles. This made the EU the most frequent user of anti-dumping measures against textiles. These measures were primarily aimed at imports from developing countries. Since many imports of textiles from developing countries had already been subject to quota restrictions, they experienced what has been described as a "double jeopardy" situation.

20. A review by the International Textiles and Clothing Bureau (ITCB, 1999/2000) of EU anti-dumping measures in this sector reveals that: (i) the ratio between initiation of anti-dumping investigations and final measures for textiles is around one third, the lowest among the key sectors investigated; (ii) the products targeted have been mainly fibres, yarns and fabrics (i.e. products in the upstream segment of the textile chain); and (iii) the number of measures in the textiles sector surpassed those in other sectors with the exception of steel products.[13] The review also indicates cases of repeated recourse to AD action against several products from a number of developing countries whose exports of these products had already been under restraint. For example, in the case of imports of grey cotton fabrics originating from China, Egypt, India, Indonesia, Turkey and Pakistan, and of imports of bed linen from Egypt, India and Pakistan, the EU repeatedly initiated several investigations from 1994 to 1997. These so-called "back to back" investigations have caused concern to textile exporting countries. According to analyses by the ITCB,[14] the trade volume of the six targeted countries in total imports of cotton fabrics by the EU

fell from 121,891 tons in 1994 to 88,306 tons in 1997. Their market share declined from 59 per cent in 1993 to 53 per cent in 1996, and again to 41 per cent in 1997. The annual growth rate of their exports to the EU market dropped sharply from 4 per cent in a prior period (1988-1994) to minus 10 per cent in the period of investigation. Eventually, the case was dropped with no anti-dumping duties imposed.

Will the phasing out of MFA quotas under the ATC lead to an increase in anti-dumping actions in this sector as has been expected by some leading economists?

B. The major problems faced by developing countries in defending their exports allegedly being dumped or subsidized

21. As indicated in section 1, 66.6 per cent of the total anti-dumping actions initiated during the first five years of operation of the WTO Agreements were targeted at developing countries. This has created instability and uncertainty in the markets for many developing countries, affecting both production and employment. The adverse impact of these measures on developing countries may be much greater than the actual trade involved as the initiation of anti-dumping and countervailing actions can have an immediate impact on trade flows and prompt importers to seek alternative sources of supply. Even if final duties are not imposed, as demonstrated in the grey cotton fabrics case described above, the initiation of investigations entails a huge burden for respondents, in particular, those in developing countries. In some cases, it would seem that petitioners initiate actions or threaten such initiation only to "harass" importers, as they are often aware that the outcome of the investigations are likely to be negative and that they are not required to pay the legal fees of successful defendants. (Of course, if the cases are successful, the exporters do not have to pay the legal fees of the domestic industry either). Consequently, suppliers often raise prices or withhold supplies to avoid being drawn into such action.

22. Anti-dumping and countervailing investigations are also frequently used by established suppliers to dissuade new entrants that are particularly vulnerable as they usually need to offer their products at lower prices. A typical case in this regard was that of *General Motors of Canada Ltd. and Ford Motor Co. of Canada Ltd. v. Hyundai*.[15] Another example is the salmon case between the United States and Chile.[16]

23. Small and medium-sized exporting firms in developing countries have difficulty defending their interests because of the complexities of the system and the costs of cooperation in investigation proceedings.[17] And generally their Governments can provide them with only limited, if any, assistance for defending their cases. As a result, the percentage of cases resulting in measures is usually higher for imports from developing countries than for those from developed countries.[18]

24. WTO rules governing anti-dumping and countervailing actions involve obligations with respect to investigatory procedures, administrative and judicial practices, review procedures of the importing countries and eventual recourse to the WTO dispute settlement mechanisms. Efforts to establish greater precision and predictability in the rules with a view to facilitating

trade have led to increasing complexity of the WTO rules. In general, the greater degree of complexity in AD/CVD procedures weighs disproportionately against developing countries and their small firms as they have relatively less developed administrations, incomplete knowledge of laws, regulations and administrative practices of the importing countries and less expertise in dealing with allegations of dumping and subsidization. This creates particular problems for them in effectively defending their rights and interests in the complex proceedings. As a result, some exporters from developing countries simply prefer to withdraw from markets.

In this context, the experts may wish to provide concrete examples of: (i) the difficulties and challenges that developing country Governments and firms, especially their SMEs, are facing in responding to allegations of dumping and subsidization; and (ii) concrete examples of how the initiation of anti-dumping actions have led to the withdrawal from markets or to the pre-emptive raising of prices.

25. Countries that are in the process of transition to a market economy, particularly those that have made significant progress in their economic reforms, are still considered as "non-market economies" by their major trading partners. These trading partners continue to use discriminatory criteria (i.e. using surrogate values from comparable market-economy countries) to value the factors of production in the "non-market economies". As these surrogate values are frequently arbitrary,[19] they often result in high — sometimes extremely high — dumping margins for the "non-market economy" exporters.[20] While the methodologies used for "non-market economies" are legitimate under the GATT/WTO rules,[21] it can be argued that such methodologies should no longer apply because they are limited to countries which have a "complete or substantially complete" monopoly of their trade and where "all domestic prices are fixed by the state," a situation which is now rare. As many "non-market economies" are also developing countries, their disadvantaged situation is also noteworthy.[22]

Can examples be given where the application of a "non-market economy" provision has resulted in exceptionally high AD duties, or more frequent resort to AD actions? Can administering authorities explain how they attempt to ensure fairness in calculating the surrogate values?

C. The major challenges faced by developing countries in using AD/CVD measures to protect their domestic industries from injury imports

26. With the significant reduction of tariffs and elimination of non-tariff measures by developing countries, their Governments are under increasing pressure to use anti-dumping and countervailing duty actions to protect their domestic industries against injury from imports.[23] Since the entry into force of the WTO Agreements, many developing countries have adopted anti-dumping legislation.[24] In addition, a number of countries that are currently in the process of acceding to the WTO have also adopted relevant national legislation or are preparing to do so.[25]

27. Many developing countries are facing difficulties in applying anti-dumping and countervailing actions. Such imposition requires substantial financial and human resources and expertise to carry out the detailed investigations in order to comply with the relevant provisions of the WTO agreements. If they do not comply, they risk being brought before the WTO dispute settlement mechanisms, where they have difficulties in defending their interests.

Can concrete examples be provided to indicate the difficulties faced by developing country administrations in applying anti-dumping and countervailing duties, and in respecting the procedural and substantive provisions of the relevant WTO Agreements? Can developing countries elaborate on the problems they have faced in WTO dispute settlement proceedings?

3. IMPLEMENTATION OF THE WTO AGREEMENTS ON ANTI-DUMPING AND COUNTERVAILING MEASURES

28. The Uruguay Round negotiations on anti-dumping resulted in the third multilateral agreement on this subject (on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994)) which introduced a greater degree of predictability in the application of anti-dumping measures. The main thrust of the resulting WTO Agreement on Anti-Dumping (AAD) was to harmonize practices among the major users at the time. However, it did not result in limiting the scope of application of anti-dumping actions.

29. Compared to the Tokyo Round Subsidies Code, the Uruguay Round Agreement on Subsidies and Countervailing Measures (ASCM) provided more explicit definitions of subsidies[26] and stronger, clearer disciplines over subsidies, but also on the use of countervailing duties. This may explain the observed decline in the initiation of countervailing investigations since the entry into force of the WTO Agreements. On the other hand, it is possible that resort to subsidies may have also decreased. In any case, anti-dumping actions are perceived as "easier" and more "politically correct" as they do not call into question the exporting countries' government policies. Since research and development (R&D), regional assistance and environmental subsidies are no longer non-actionable, the application of countervailing duty actions is expected to increase.

A. Disputes relating to the application of AD/CVD measures

30. Since the entry into force of the WTO Agreement on 1 January 2000, 24 disputes related to the AAD had been referred to the WTO dispute settlement procedures (as of 22 June 2000), accounting for 12 per cent of the total disputes before WTO. The petitioners for these anti-dumping disputes were mainly, Mexico (6), the EU (4), the Republic of Korea (3), India (3), Costa Rica (2), the United States (2) and Japan (2); and the respondents were mostly the United States (8), the EU (2), Guatemala (2), Mexico (2), Argentina (2), Ecuador (2) and Trinidad and Tobago (2). The main products involved included steel products, cements and pasta.

31. With respect to the application of countervailing duty measures, six disputes[27] have been

referred to the WTO dispute settlement proceedings. The petitioners were the Philippines, Sri Lanka, the EU (2), Canada and Chile; and the respondents were Brazil (2), the United States (3) and Argentina. The main products involved were agricultural products.

B. Work at the WTO Committee on Anti-Dumping Practices

32. Pursuant to Article 16 of the Agreement on Anti-Dumping, the Committee on Anti-Dumping Practices (ADP) was established to monitor implementation of the Agreement by WTO members and as a forum to "afford Members the opportunity of consulting on any matters relating to the operation of the Agreement and the furtherance of its objectives."

33. Since the entry into force of the WTO Agreement, the Committee has conducted a series of reviews on national legislation and their consistency with the Agreement based on notifications submitted by WTO members. During these reviews a number of issues, both procedural and substantive, were raised with respect to the implementation of the Agreement.

C. Discussions at the Ad Hoc Group on Implementation

34. In order to further clarify and prepare recommendations on the issues raised by the Committee on Anti-Dumping Practices with respect to the implementation of the Agreement, an Ad Hoc Group on Implementation was established. At its recent meeting, the group decided to set the following topics aside from active consideration: treatment of confidential information, sampling methods, special circumstances, notification by exporting members, hearings, disclosure of essential facts, public notices and duty assessment. As decided by the Committee on Anti-Dumping, the group will take up the following new topics: price comparisons, *de minimis* import volume, cumulation, questionnaires and requests for information, opportunities for industrial users and consumer organizations to provide information and new shipper review. The group will discuss these new topics with the intention to develop agreed understandings or recommendations on implementation for consideration by the Committee on Anti-Dumping.[28] It has been widely suggested that the group should be undertaking a more ambitious work programme and producing more and faster results in the form of formal recommendations on implementation of the Agreement on Anti-Dumping.[29]

D. Discussions at the Informal Group on Anti-Circumvention Measures

35. The Marrakech Ministerial Meeting which concluded the Uruguay Round decided to refer the question of anti-circumvention measures to the WTO Committee on Anti-Dumping Practices for resolution. In April 1997, the Committee on Anti-Dumping established an Informal Group on Anti-Circumvention to continue the discussions and to make recommendations concerning these issues for consideration. In October 1997, the Informal Group started to discuss the first topic in the agreed framework, namely, "What constitutes circumvention?" However, after more than two years of discussions the group has not made any substantial progress.[30]

36. Anti-circumvention measures are directed essentially at two phenomena: (a) when an exporter subject to anti-dumping duties assembles the product in question in a third country and continues to export to the market in question from that country (third country circumvention); or (b) when the parts and components are exported to the market in question and assembled there (importing country circumvention).[31] Anti-circumvention measures are examples of "globalization" provoking a trade policy response. In the absence of multilaterally agreed rules on circumvention, a number of WTO members have unilaterally adopted anti-circumvention legislation. These include the EU, the United States, as well as some developing countries such as Argentina, Colombia and Mexico. It has been suggested that the problem of circumvention can be dealt with as an issue under the rules of origin or classification. Some experts and trade policy practitioners believe that the problem of "third country circumvention" is due to the absence of codified and detailed multilateral non-preferential rules of origin.[32] As a result of this, ad hoc and discretionary practices in defining origin have sometimes been used by the national investigating authorities of the importing countries. The WTO Agreement on Rules of Origin clearly stipulates that the eventually harmonized rules of origin shall be used in all WTO instruments of commercial policy. However, it remains to be seen if the final results of the harmonization of rules of origin will be suitable for use in anti-circumvention cases.

37. Some experts and trade policy practitioners are of the view that a reasonable multilaterally agreed upon anti-circumvention provision is preferable to the current jungle. While suggesting that the Dunkel draft of the Uruguay Round provides a reasonable starting point for continued negotiations, it is also emphasized that precise definitions on key terms would be essential.[33]

E. The WTO Working Group on Interaction between Trade and Competition Policy

38. The first WTO Ministerial Conference held in Singapore in December 1996 decided to establish a working group to study issues relating to the "interaction between trade and competition policy." In addressing the relationship between competition policy and anti-dumping measures, it expressed the view that anti-dumping rules aimed at protecting competitors from allegedly unfair trade, whereas competition rules sought to protect competition. It also found that anti-dumping measures were often used by firms as a strategic tool to restrain or eliminate competition in the market as even the threat of anti-dumping action could have restrictive effects on competition and induce exporters unilaterally to reduce their exports, raise their prices, or change their production location.[34]

39. Regarding the anti-competitive effects of anti-dumping and countervailing measures, some expressed the view that the Working Group should consider ways and means to ensure consistency between trade policy and competition policies, and that there was need to carry this out through discussions on the existing anti-dumping measures.[35] However, others opposed the review of anti-dumping measures and suggested the Group should focus on competition policy instead and leave trade measures alone.[36]

40. Certain regional agreements, such as the European Economic Area (EEA)[37] and the Australia/New Zealand Close Economic Relation Trade Agreement,[38] have succeeded in

replacing the anti-dumping regimes with competition policy. Anti-dumping has also been eliminated in the Canada-Chile Free Trade Agreement (FTA).

F. Discussions within the context of the ongoing process of "implementation"

41. Among the steps to rebuild the confidence of the international community following the breakdown of the WTO Seattle Ministerial Conference, a programme for addressing implementation issues and concerns was adopted at the meeting of the WTO General Council on 3 May 2000. Under the programme, the Special Session of the WTO General Council held the first round of discussions from 23 June to 3 July 2000 to consider proposals on implementation, especially those reflected in the compilation of proposals in WTO document Job(99)4797/Rev.3 of 18 November 1999 and in paragraphs 21 and 22 of the draft Ministerial Text of 19 October 1999 (WTO document: Job(99)5868/Rev.1). It was also decided that the Special Session of the WTO General Council would hold the second round of discussions on 18-19 October 2000. Anti-dumping and countervailing duties were the subjects of many of these proposals.

42. Some of the proposals made to improve the AAD relate to aspects which may need adjustments and/or refinements to take into account differences in production and accounting methods. Others relating to implementation aspects concern difficulties which may arise, not as a violation of the obligations contained in the AAD, but rather from national practices making full use of the flexibility resulting from imprecise and ambiguous provisions in the AAD. The following issues have been suggested as crucial to the improvement of the anti-dumping and countervailing duty regimes:

(i) The "5 per cent representative test rule"

43. In determining the margin of dumping, the normal value based on sales in the domestic market is preferred to the other alternatives (which entail complicated calculations and may lead to high normal values). Before the entry into force of the WTO Agreement, the importing countries used different bases to calculate the threshold for assessing whether sales in domestic markets were sufficient for determining normal value. Footnote 2 of Article 2.2 of the AAD sets a predictable and transparent "5 per cent representative test rule". Under this rule, insufficient domestic sales may be deemed to be those representing less than 5 per cent of the sales exported to the market in question. However, a lower ratio should be acceptable if it is nonetheless of a sufficient magnitude to provide for a proper comparison. The idea behind the rule is that small transaction volumes may entail prices reflecting circumstances that are not representative of a normal market situation.

44. However, as pointed out by some experts, [39]the problem here is that there is a lack of clarity in the AAD as to how the "5 per cent rule" should be applied; the rule, as currently set out, perhaps too easily results in usable sales being rejected. While some WTO members apply the "5 per cent rule" on a global basis (i.e. all domestic sales are measured against all export sales

of the product concerned and if the "5 per cent rule" is passed, all domestic sales are used), others apply it differently.[40] Nearly always, the types of goods exported are different from those sold on the domestic market. In such a situation, at a global level, the "5 per cent rule" will be passed. But, for each type of good exported, there may be a relatively small quantity of exactly the same type of good sold domestically and resort can then be had to constructed normal values. In order to minimize such ambiguities and to maximize the use of actual prices, some improvements are clearly needed in the AAD.

What is your national experience in making use of this provision? What impact has this provision had on the determination of normal value? Could the application of this rule lead to unreasonable results? Do you have any suggestion on how to amend or better administer and implement the AAD in this respect?

(ii) Sales below cost of production

45. For cyclical products, such as synthetic textiles (which rely heavily on petrochemicals), steel and semi-conductors, a certain amount of sales below cost of production may occur, especially where the cycle is at the bottom — a problem peculiar to the business cycle. With respect to other products, such as consumer electronics and office automation equipment, the product cycle is more important because products constantly change. Once new models are introduced at premium prices, old models are then often sold at basement prices.

46. Article VI of the GATT and previous anti-dumping codes did not address the issue of sales below cost. However, an informal agreement between the major users, at that time, of anti-dumping measures was reached in 1978. This informal agreement was basically taken over in AAD Article 2.2.1 (as indicated in its footnote 5) sales below cost of production – 20 per cent threshold. The provisions of the AAD on sales below cost are a step forward because they provide detailed rules and therefore limit the amount of discretion that can be exercised by authorities. However, the rules are still very restrictive and permit unreasonable findings of dumping. Thus, there is a need to increase the substantial quantity test from the present 20 per cent threshold to a higher percentage. Some experts have suggested that the threshold should be raised to 40 per cent.[41]

Under what circumstances do sales-below-cost reflect commercial considerations rather than an intention to dump? If the suggested threshold reflects the realities of business cycles, do you wish to consider it and take into account the experiences gained during the operation of the Agreement? Do you have alternative ideas or justifications for a threshold?

(iii) Minimum volume of profitable sales

47. It is generally considered acceptable to ignore domestic sales below cost in cases where the average selling price is below the average cost during the investigation period. However, in most cases, the situation is more complicated and the average sales price will be above average

cost, yet substantial sales below cost may occur. Two questions then arise. Should normal value be based on all domestic sales, including those made at a loss? Secondly, under what circumstances should sales prices be ignored altogether? The first question has been discussed above. However, there is no guidance on the minimum volume of profitable sales to be used for normal value (the alternative being constructed normal value). Some countries have an explicit volume prescribed in their legislation (there must be a minimum of 30 per cent of domestic sales made at a profit in order for the profitable prices to be used).[42] Some have an informal guideline minimum of 10 per cent of domestic sales, while others have no minimum requirements. It is suggested that there should be a consistent approach on this issue between WTO members, as these different approaches can produce radically different dumping margins from the same data set.

Can these different approaches produce radically different dumping margins from the same data set? If so, what thresholds do you suggest for establishing a consistent approach to this issue?

(iv) Need for clarification of imprecise expressions

48. In the determination of domestic prices, Article 2.2 of the AAD refers to the expressions of "ordinary course of trade" and "particular market situation". As these expressions are vague and imprecise, they can be interpreted in different ways. For example, the term "ordinary course of trade" can be explained as "ordinary course of trade by reason of prices" (e.g. where prices are below cost), or as "ordinary course of trade by domestic prices to related customers" (i.e. transfer prices).

49. Another ambiguity in Article 2.2 of the AAD concerns the use of other companies' prices in addition to cost of production or export prices to a third country.

50. It has been suggested that clarifications to this Article are required with a view to reducing the degree of uncertainty facing exporters and curbing the discretion of the anti-dumping authorities.

What imprecision in the AAD can provide excessive flexibility to administering authorities in determining dumping, and injury and in calculating dumping margins?

(v) The problem of the reasonable profit margin in constructed normal values

51. Article 2.2 of the AAD provides that a constructed normal value must include a reasonable amount for profits. Article 2.2.2 provides two concrete examples of manners in which profit margins may be calculated. In the case of H-beams,[43] for example, WTO panels have held that these methods are, by definition, reasonable. Yet, it is a fact that the resulting profit margin may be very high — more than 36 per cent as in the H-beams case. Thus, it is suggested that there is a need for revision of the AAD provisions in this regard.

Have you had experience with cases where the reasonable profit margin calculated in accordance with Article 2.2.2 was unusually high with respect to the product concerned?

(vi) Comparison between export price and normal value

52. Article 2.4 of the AAD requires that the comparison between export price and normal value should be done on a weighted average-to-weighted average basis, or on a transaction-to-transaction basis, subject, however, to three major exceptions. In practice, this rule has been viewed as rather vague, as a result of which it can be applied with discretion by the national investigating authorities. Second, some jurisdictions take the position that the provision applies only to original investigations and not to annual reviews. Third, some jurisdictions take the position that inter-model zeroing is still allowed. Therefore, it is suggested that the exceptions should be abolished and it should further be clarified that weighted average-to-weighted average or transaction-to-transaction comparisons should be made both in original and in review investigations, and not only intra-model, but also inter-model.

Which method do you apply? Have you encountered instances where use of one method rather than another had a significant impact on the result of the case? Have you encountered other problems than those signaled here?

(vii) Method of calculations and adjustments in the determination of normal value

53. In developing countries, in particular, it may often be impossible to distinguish in a warehouse the amount of domestic inputs and imported inputs utilized in the production of a finished product. This may be an excuse for authorities to reject duty drawback claims, resulting in excessive normal values and high dumping margins.

54. Normally export credit terms are netted back to the ex factory prices. However, practice indicates that, unless the credit terms are laid down in a contract or letter of credit, they have to be disregarded. Such formal arrangements are normally concluded in export transactions when dealing with foreign clients and are consequently deducted from the export value calculations. However, the same situation in the domestic market may vary given the actual business relations in the home market where, in some cases, credit terms are not supported by a formal contract or a letter of credit. This may lead to disregarding the credit terms in the determination of normal value while accounting for it in the determination of the export price. This asymmetry may lead to a dumping finding that has much more to do with the way business is conducted than the concept of unfair competition.

Have you encountered problems with duty drawback, credit terms, level of trade or other adjustment issues? Could you give examples? Should there be special and differential evidentiary treatment for developing countries?

(viii) De minimis margins

55. Article 5.8 of the AAD provides that anti-dumping duties shall not be imposed, if the dumping margin is less than 2 per cent, expressed as a percentage of the export price. However, some countries so far have applied this standard only to newly initiated cases not in review and to refund cases. This has been upheld by the WTO panel on DRAMS (Dynamic Random Access Memory Semiconductors).[44] It has been proposed that this margin be raised to 5 per cent.

> *Would an increase in the threshold provide meaningful benefits to developing countries in practice?*

(ix) Standing (or the threshold for determining whether a "major proportion" of the industry supports an anti-dumping complaint)

56. Recourse to an anti-dumping action always starts with a complaint received from the domestic producers of goods that compete with the imported goods. In order to make the complaint by the domestic industry stand up to injury analysis, it must be made by or on behalf of the domestic industry and must be supported by producers whose collective output of the goods represents 25 per cent or more of total domestic production, and more than 50 per cent (volume-wise) of the producers must support the complaint.

57. This threshold for determining whether a "major proportion" of the industry supports an anti-dumping complaint is not clearly defined. It could include a situation where less than 50 per cent of production is considered to be the domestic industry. Using the 25 per cent complainants' standing test, for example, is literally consistent with the WTO. However, using 25 per cent as the basis to determine a "major proportion" potentially allows the injury analysis to be done on the basis of a minority of the industry. There are cases where it is clear that the complainants are the least efficient producers in the market and such a low threshold allows decisions on injury to be made on the basis of an unrepresentative sample of the industry. As a result, the various WTO members have used different criteria in defining the "major proportion".

58. Furthermore, it should be noted that the lower criteria used in practice are also due to the interpretation of the term "related". According to Article 4.1(i) of the AAD, producers that are "related to the exporters and importers" are excluded from the calculation, thus leaving the effective thresholds below the 50 per cent and 25 per cent stated in Article 5.4 of the AAD. As the process of globalization advances, more firms will be involved in both domestic and foreign production of the same product and thus, there will be a tendency for these thresholds to be further eroded over time. In this regard, a matter of particular concern is the footnote to Article 1.2 of the WTO Agreement on Rules of Origin which explicitly excludes from its scope of application the definition of domestic industry in anti-dumping proceedings as this may allow the investigating authorities to continue to use arbitrary standards for determining whether a domestic producer is really "domestic".

59. Lastly, because of confidentiality, it is often impossible to verify authorities' statements

that the 25 per cent and the 50 per cent tests have been met. Yet WTO panels have held that exporters have the burden of proof on this point, if they wish to challenge it.

Have you encountered examples of producers who account for a relatively low proportion of domestic production successfully initiating anti-dumping actions? Have you seen cases where you had doubts as to whether the tests had been met, but could not get access to the relevant information?

(x) De minimis injury (or negligible import volumes)

60. The *de minimis* injury standard is set in Article 5.8 at less than 3 per cent of imports into the market in question. Some WTO members (e.g. the EU) have introduced a standard in relation to market share (i.e. *de minimis* imports are those with less than 1 per cent of market share). The problem with such a provision is that total consumption (which is required to calculate market share) is often only an estimate. To this extent the 3 per cent test is more reliable and likely to be more consistent. However, the greater reliability of the 3 per cent test does not alter the fact that this is still a rather small proportion of total imports, and in fact, can often be a very small figure in terms of the overall market for the product concerned. As a result it is often difficult to see how such a proportion of imports could be construed as causing injury. It has been proposed that this be increased to 5 percent.

Would such an increase in the de minimis share of imports avoid the application of anti-dumping duties?

(xi) Article 3 of the AAD

61. With regard to the determination of injury, the inadequate application of Article 3 of the AAD in concrete cases has become a matter of concern rather than the provision itself. In particular, more transparency should be provided in the calculation of injury margins. Furthermore, although both the injury and dumping margin must be calculated, the anti-dumping duty should reflect the lower of these two margins.

Can you cite some examples or share your experience as to how Article 3 of the AAD has been applied in concrete cases?

(xii) Lesser duty rule

62. A key provision of Article VI of the GATT (1994), reiterated in Article 9, is that anti-dumping duty shall not exceed the margin of dumping established. Indeed the text says that it is desirable that a lesser duty be imposed if that would be sufficient to remove the injury being caused (often called the lesser duty rule). However, this latter point is not a compulsory requirement, and not all members follow it. This is a matter for national legislation but, even apart from grounds of equity, it is in the broader national interest to follow a lesser duty rule

instead of giving the domestic industry concerned what would constitute additional protection, albeit not inconsistent with the member's WTO obligations. It has been proposed that the lesser duty rule be made mandatory.

Can you provide examples of where the lesser duty rule has not been applied? Does the lesser duty rule in your experience meaningfully minimize the level of duties imposed?

(xiii) Duration (or Sunset Review)

63. Anti-dumping and countervailing actions are supposed to be temporary measures. In reality, many measures have remained in place for a long time and some even for decades. For example, among the measures in force at 31 December 1999 as notified by the United States to the WTO, a number of cases have been maintained for almost three decades.[45] Despite some improvements as a result of the sunset reviews, it is clear that there is a need for further improvements with a view to preventing these measures from becoming long-term trade obstacles. The major problem is the difficulty faced by the exporters concerned to establish that dumping and injury are not likely to continue or recur as Article 11.3 of the AAD allows national authorities to administer their sunset reviews in a narrow manner. In order to improve the situation, some practitioners have suggested that the "standing" threshold should also be clearly specified in this regard and must be met before any decision on whether or not an anti-dumping measure should be continued. Clear standards and procedures should be established for determining whether injury is likely to continue or reoccur.[46]

What are your views and experiences in this regard?

(xiv) Special and differential treatment for developing countries

64. Although Article 15 of the AAD recognizes that special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures, such provision is only a best-endeavour clause. Consequently, members have rarely, if at all, explored the possibility of constructive remedies before applying anti-dumping duties against exports from developing countries.

Based on your experience, what ways and means do you suggest for providing meaningful benefits to developing countries?

65. Finally, a question that concerns all the issues raised in this last section concerning implementation needs to be addressed.

Do you wish to share your country's experiences and national practices in relation to the specific points raised above, and suggest ways and means to address the specific concerns which may have arisen during the implementation of the AAD?

Chart A

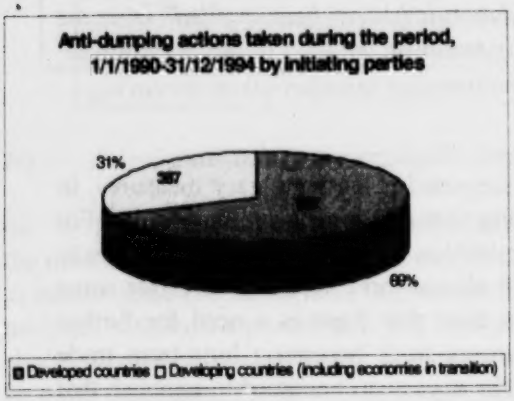


Chart B

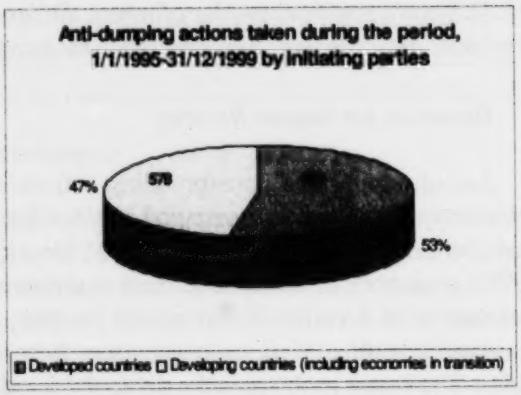


Chart C

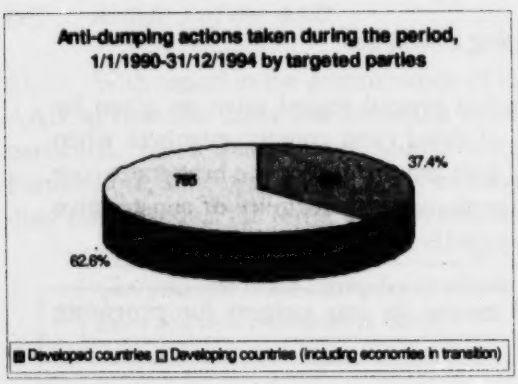
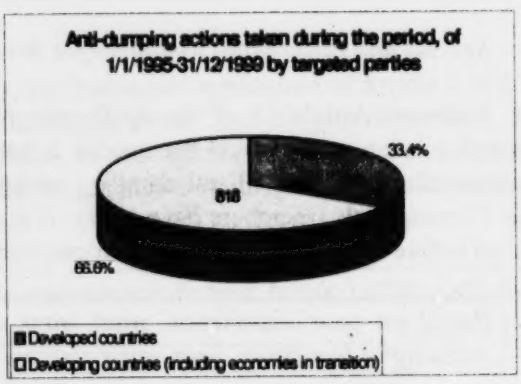


Chart D



Source: WTO Rules Division database

Chart E

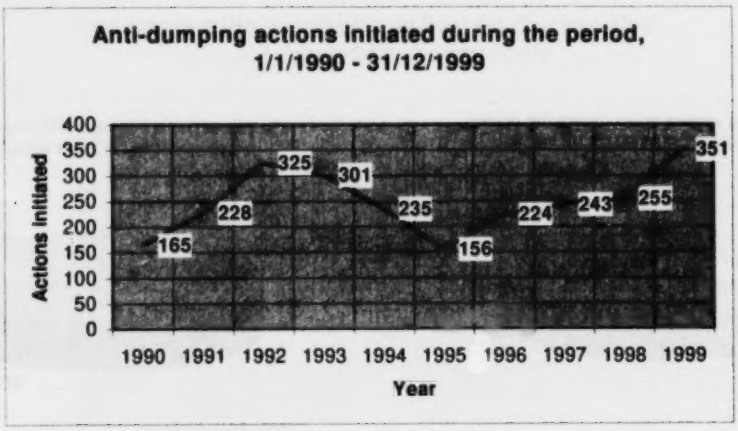
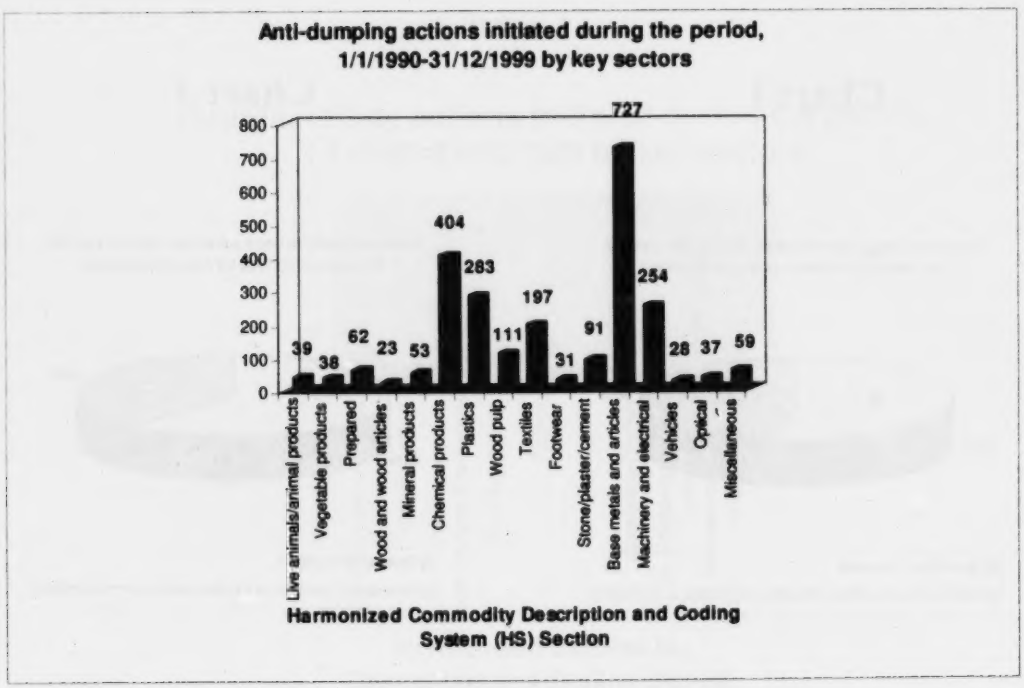


Chart F



Source: WTO Rules Division database

Chart G

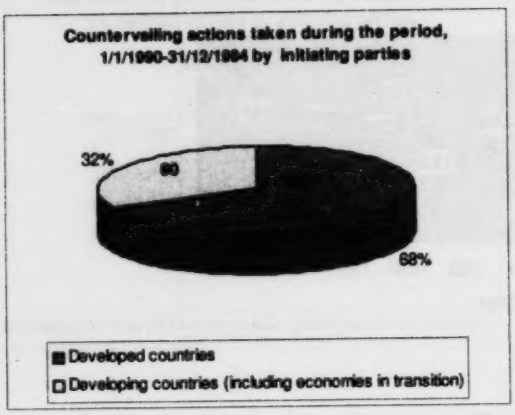


Chart H

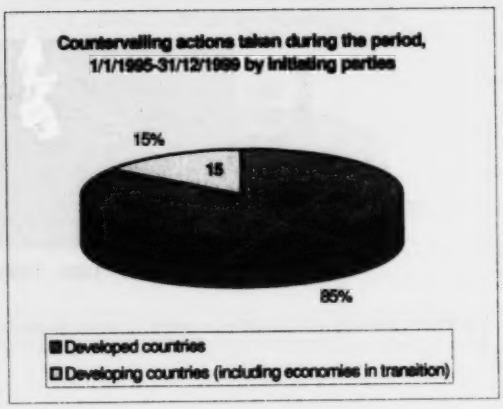


Chart I

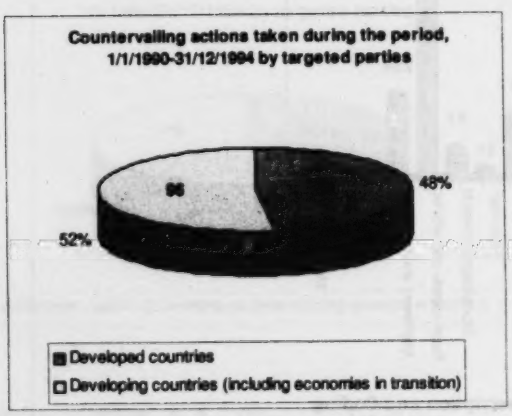
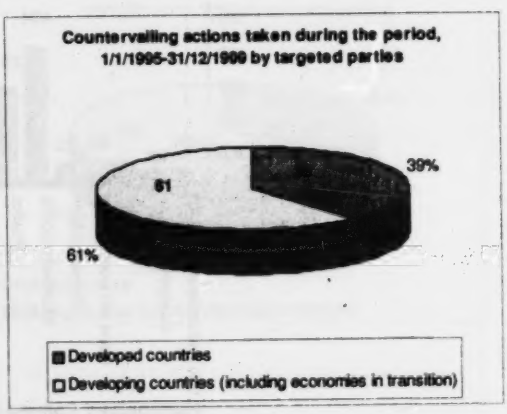


Chart J



Source: WTO Rules Division database

Chart K

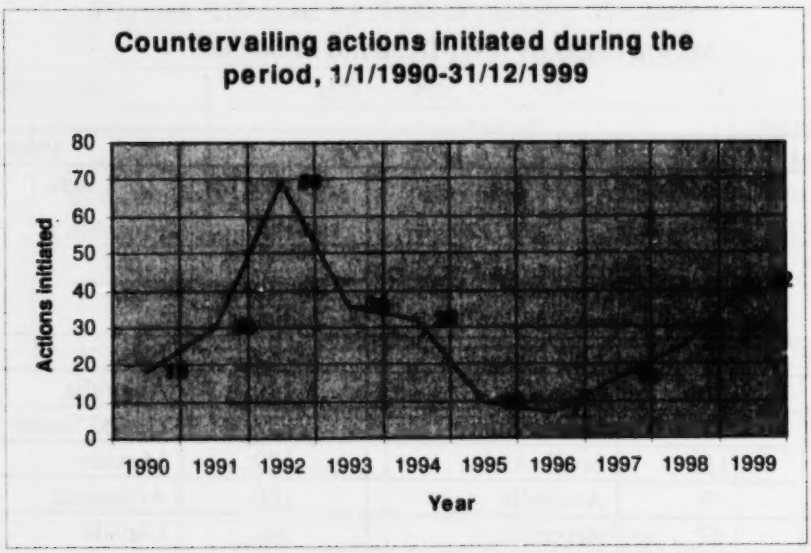
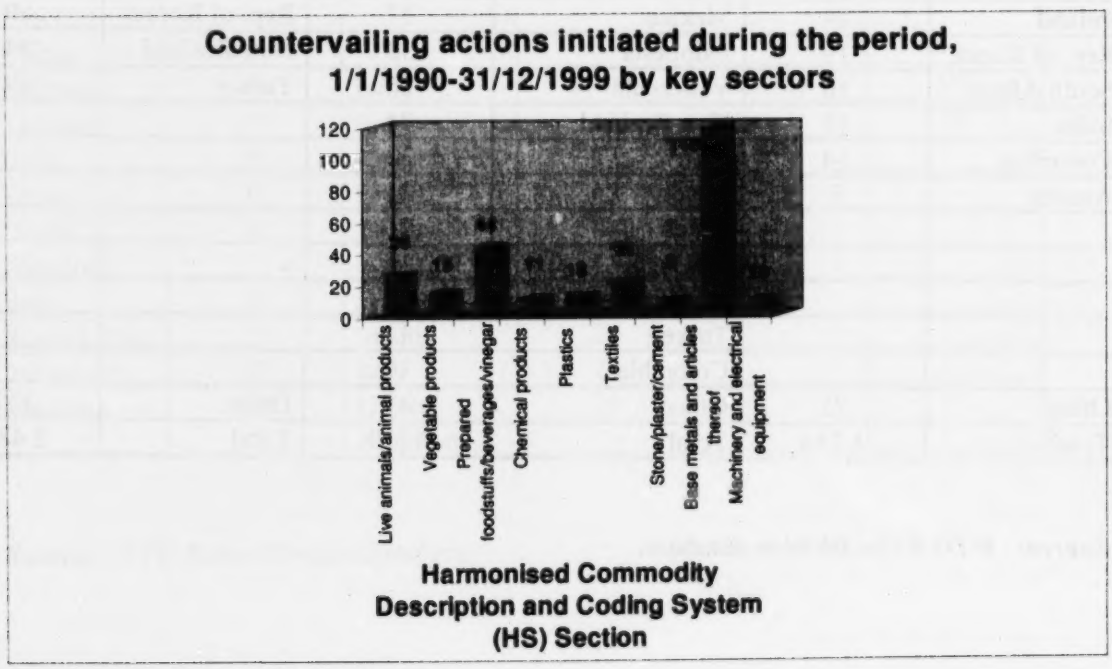


Chart L



Source: WTO Rules Division database

Table-I

MAJOR USERS OF ANTI-DUMPING MEASURES

1990 -1994		1995- 1999		1990 - 1999	
Users	Number of Anti-Dumping Measures initiated	Users	Number of Anti-Dumping Measures initiated	Users	Number of Anti-Dumping Measures initiated
Australia	260	EU	189	EU	372
United States	219	India	140	Australia	360
EU	183	United States	132	United States	351
Mexico	139	South Africa	129	Mexico	176
Canada	99	Australia	100	Argentina	156
Brazil	67	Argentina	96	Canada	155
Argentina	60	Brazil	68	India	155
New Zealand	30	Canada	56	South Africa	145
Turkey	28	Rep. of Korea	41	Brazil	135
Poland	24	Mexico	37	Rep. of Korea	60
Rep. of Korea	19	Indonesia	33	New Zealand	54
South Africa	16	Venezeula	26	Turkey	39
India	15	New Zealand	24		
Colombia	14	Peru	22		
Austria	9	Egypt	21		
		Israel	21		
		Malaysia	16		
		Philippines	12		
		Turkey	11		
		Colombia	10		
Other	72	Other	45	Other	325
Total	1 254	Total	1229	Total	2 483

Source: WTO Rules Division database.

Table II

Parties Affected by Anti-Dumping Measures

1990-1994		1995-1999		Total	
Affected parties	**Number of Anti-dumping measures**	**Affected parties**	**Number of anti-dumping measures**	**Affected parties**	**Number of anti-dumping measures**
China	149	China	159	China	308
United States	105	Rep. of Korea	98	United States	184
Rep. of Korea	73	United States	79	Rep. of Korea	171
Brazil	65	Taiwan, Province of China	60	Japan	121
Japan	63	Japan	58	Taiwan Province of China	112
Taiwan Province of China	52	Germany	50	Brazil	107
Germany	49	India	48	Germany	99
Thailand	37	Indonesia	47	India	85
India	35	Russian Fed.	47		
France	35	Brazil	42		
United Kingdom	32	Thailand	41		
Italy	27	France	26		
Russian Fed.	27	Spain	24		
Indonesia	23	Italy	23		
Malaysia	22	United Kingdom	23		

Source: WTO Rules Division database.

Table-III

Definitive Anti-Dumping Duty Measures in Force***
(As of 31 December 1999)

Measures Maintained by parties			Affected parties		
	Number of Measures	Percentage of total		Number of Measures	Percentage of total
United States☆	315	29.2	China	198	18.3
EU	189	17.5	EU✪	167	15.4
South Africa	86	8	Japan	82	7.6
Mexico	80	7.4	Taiwan Province of China	59	5.5
Canada	79	7.3	United States	56	5.2
India	64	6	Rep. of Korea	52	5
Argentina	45	4	Brazil	43	4
Australia	44	4	India	33	3.1
Brazil	38	3.5	Russian Fed.	33	3.1
Turkey	36	3.3	Thailand	29	2.7
Rep. of Korea	26	2.4	Romania	20	2
Other	78	7.4	Other	308	28
Total	1 080	100	Total	1 080	100

Source: WTO documents G/ADP/N/59 series.

*** Including undertaking
☆ Measures in force as of 30 June 1999
✪ Including measures affecting its individual member-States

Reference

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Endnotes

[1] For example, Finger J M. GATT Experience with Safeguards: Making Economic and Political Sense of Possibilities that the GATT Allows to Restrict Import, 1997.

[2] See GATT BISD, Thirty-third Supplement, 1987: 210-212,

[3] The term, "developed countries" or "developed market economy countries" as employed by the Statistical Division of the United Nations includes Australia, Austria, Belgium, Canada, Denmark, Faeroe Islands, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands New Zealand, Norway, Portugal, Spain, Sweden, South Africa, Switzerland, the United Kingdom and the United States.

[4] Website, http://www.ia ita. Doc.gov/foradcvd/tables.htm.

[5] Third country commercial defense investigations concerning EC exports (September 99).

[6] As this could entail higher costs for EU industry (cost of cooperation with investigating authorities, imposition of residual duties on all EU exports instead of those originating in one EU Member State only) and could increase the risk of imposition of measures (total EU exports could serve as a basis for injury assessment), investigated imports would be more often above the *de minimis* threshold.

[7] See, for example, *Venezuela – Anti-Dumping Investigation in Respect of Imports of Certain Oil Country Tubular Goods* (OCTG), complaint by Mexico (WT/DS23); *Guatemala – Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico*, complaint by Mexico (WT/DS60); *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel: H-Beams from Poland*, complaint by Poland (WT/DS122/1); *Guatemala – Definitive Anti-Dumping Measures regarding Grey Portland Cement from Mexico*, complaint by Mexico (WT/DS156); *Ecuador – Provisional Anti-Dumping Measure on Cement from Mexico, complaint by Mexico* (DS182/1); *Trinidad and Tobago – Certain Meaures Affecting Imports of Pasta from Costa Rica*, complaint by Costa Rica (DS185/1); *Trinidad and Tobago – Provisional Anti-Dumping Meaures on Macaroni and Spaghetti from Costa Rica*, complaint by Costa Rica (DS187/+); and *Ecuador – Definitive Anti-Dumping Measures on Cement from Mexico, complaint by Mexico* (DS191/1).

[8] OECD Economic Department. Trade and Competitions: Frictions after the Uruguay Round (note by the secretariat), OECD, Paris, 1996.

[9] Barringer W H and Pierce K J. Paying the Price for Big Steel, $100 million in Trade Restraints and Corporate welfare, 30 Years of the Integrated Steel Companies' Capture of U.S. Trade Policy, 2000: 51-110.

[10] For example, during the period 1 October 1998, through 30 September 1999, imports of $13 million were made from corrosion-resistant steel sheets from Japan and of 1.9 million of cut-to-length steel plate from the United Kingdom. Both were subject to anti-dumping duty orders. Anti-dumping duty deposits of $3.5 million and $2 million respectively, were required from United States importers on these imports. The total amounts deposited for all imports subject to AD/CVD orders (steel and non-steel) during this period were $391 million (anti-dumping duty deposits) and $16.9 million (countervailing duty deposits). United States Department of the Treasury, Customs Service, *AD/CVD Annual Report Fiscal Year 1999*. See id. p. 81 footnote 92.

[11] See United States Census Bureau trade statistics 1999 series, as quoted in Inge Nora Neufeld's paper: Anti-dumping and countervailing procedures – use or abuse? How to overcome shortcomings of the WTO Agreements (forthcoming).
[12] WTO document G/ADP/N/ series, 1999-2000.
[13] ITCB document CR/XxiX/PAK/7 of 6 July 1999 and CR/31/GTM/5 of 17 May 2000.
[14] Idem.
[15] The case was brought by General Motors of Canada Ltd. (GM) and Ford Motor Co. of Canada Ltd. (Ford) in June 1987, arguing that the Hyundai imports seriously reduced their profit and employment levels in Canada. Finally, the Canadian Import Tribunal (CIT) rejected these complainants. For details see Canadian Customs and Excise Reports 14 CER, pp. 248-255 and 16 CER, pp. 185-220. See also Gi-Heon Kwon, Transnational Coalitions Among Societal, State and International Actors: GM, Ford and Hyundai in the Canadian Anti-Dumping Case, *The World Economy*, Vol. 18 No.6, November 1995.
[16] USITC announcement (No. 731-TA-768). It was reported that both side of the case involved Norway fishing interests and Canada fishing interests.
[17] For example, in North America, it is not unusual for exporters to incur defence costs well in excess of US$500,000 or US$ 1 million to defend their interests. At such costs, small exporting firms in developing countries are hardly able to take advantage of the procedural and substantive rights theoretically available to them.
[18] See Table IV.2 of GATT, *Trade Policy Review*, United States 1994, Volume 1, June 1994, which is based on USITC, UNSO-COMTRADE and GATT secretariat estimates. It was reproduced in UNCTAD document TD/B/WG.8/6 of 15 November 1995, p. 30.
[19] For example, if the exporter's reported cost for a particular input was equivalent to US$ 10, but that same input would cost US$ 20 in country A and US$ 10 in country B (both countries A and B having market economies), the national authorities of the concerned importing country may inflate the exporters' margin by selecting the cost of the input in country A as the surrogate value.
[20] For example, in the case of Natural Bristle Paintbrushes and Brush Heads from China, the anti-dumping duty rate imposed by the United States national authorities based on the "non-market economy" criterion was 351.92 per cent.
[21] Article 2.7 of the Anti-Dumping Agreement and the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.
[22] For example, in the case of Natural Bristle Paintbrushes and Brush Heads from China, United States imports fell from 38,000,000 units in 1984 (the year before the initiation of the AD action) to 3.2 per cent (or 1,223,000 units) of its pre-order level in 1997. United States Census Bureau trade statistics; 64 FR25011, May 10 1999.
[23] As of 31 December 1999, 31 WTO member have applied anti-dumping actions and 13 have applied countervailing actions. WTO Rules Division database.
[24] According to WTO document G/ADP/W/413 and G/SCM/W/424 of 17 April 2000, nearly 70 WTO members have national legislation on AD and CVD.
[25] Such as China, the Russian Federation and Saudi Arabia.

[26] See Article 1 of the ASCM. The ASCM defines subsidies in three categories (prohibited subsidies, actionable subsidies and non-actionable subsidies) according to specificity.
[27] *Brazil — imposition of countervailing duties on desiccated coconut from the Philippines*, complaint by the Philippines; *Brazil — imposition of countervailing duties on desiccated coconut from Sri Lanka*, complaint by Sri Lanka; *United States – imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom*, complaint by the EU; *Argentina – countervailing duties in imports of wheat gluten from the EU*, complaint by the EU; *United States – countervailing duty investigation with respect to live cattle from Canada*, complaint by Canada; *United States – countervailing duties on imports of salmon from Chile*, complaint by Chile.
[28] See WTO document G/L/340 of 1 November 1999, page 3.
[29] See WTO document G/ADP/M/15 of 14 March 2000.
[30] See WTO document G/L/340 of 1 November 1999, page 3.
[31] One case of anti-circumvention concerning a screwdriver plant was brought before a GATT panel (*EEC - Regulation on Imports of Parts and Components*), adopted on 16 May 1990. See GATT document L/6657 as well as BISD 37S/132.
[32] Vermulst E. Anti-Dumping and Anti-Subsidy Concerns for Developing Countries in the Millennium Round: Key Areas for Reform. Paper presented at UNCTAD Seoul Workshop on the "Positive Agenda" held on 8-10 June 1999, as contained in UNCTAD, *Positive Agenda and Future Trade Negotiations*, United Nations, New York and Geneva, 2000: 297-298.
[33] Idem.
[34] See WTO document WT/WGTC/2 of 8 December 1998, paragraph 140.
[35] See WTO document WT/WGTC/2 of 8 December 1998, paragraph 151.
[36] See WTO document WT/WGTC/2 of 8 December 1998, paragraph 152.
[37] Under the EEA Agreement, which entered into force on 1 January 1994 between the EU and most countries of the European Free Trade Area (EFTA), anti-dumping and countervailing measures are not applied between the contracting parties. As a result of the entry into force of the EEA, all EC pending anti-dumping measures involving EFTA countries were suspended as of 1 January 1994 (EC Regulation No. 5/94 of 22 December 1993, O.J. (1994) L 3/1). The proceedings against Silicon carbide from Norway was later terminated (EC O.J. (1994) L 94/32). However, with respect to Iceland and Norway the fisheries sector was excluded, as these countries could not accept the EU policy for fisheries. This exclusion permitted the Commission to initiate in August 1996 anti-dumping and countervailing duty proceedings concerning imports of salmon from Norway (see WTO document G/ADP/N/22/EEC) which led to the acceptance of a price undertaking from the Norwegian Government and from a number of Norwegian exporters in 1997).
[38] Under the Protocol agreed between Australia and New Zealand, which came into effect on 1 July 1990, pursuant to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), both countries agreed to amend their trade legislation so as to abolish anti-dumping actions between the two countries, and to suspend all anti-dumping duties then outstanding.

[39] Kempton J and Stevenson C of Rowe & Maw (London). Agreement on Implementation of Article VI of the GATT 1994: Practical Problems and Possible Solutions.London: International Trade Law Report, 2000:9.

[40] Ibid. For example, in the EU, there are two stages: first, the global rule, and then a second stage requires the "5 per cent rule" to be applied for each type or model.

[41] Vermulst, *op.cit.*

[42] See, WTO document G/ADP/N/1/MEX/1 of 18 May 1995:17.

[43] See WTO Dispute Settlement Panel Report on Thailand — *Anti-dumping Duties on Angles, Shapes and Sections of Iron for non-Alloy Steel and H-Beams from Poland.* WT/DS/22//R, 28 September 2000.

[44] See WTO Dispute Settlement Panel Report, *United States — Anti-Dumping Duty on Dynamic Random Access Memory Semiconductor (DRAMS) of one megabit or above from Korea*, WT/DS/99/R, 27 January 2000

[45] See WTO document G/ADP/N/59 USA of 18 April 2000.

[46] Vermulst E. Anti-Dumping and Anti-Subsidy Concerns for Developing Countries in the Millennium Round: Key Areas for Reform. Paper presented at the UNCTAD Seoul Workshop on the "Positive Agenda" held on 8-10 June 1999, as contained in UNCTAD Publication: *Positive Agenda and Future Trade Negotiations*. New York and Geneva: United Nations, 2000: 296; Corr CF. Trade Protection in the New Millennium: the Ascendancy of Antidumping Measures. *Northwestern Journal of International Law & Business*, Fall 1997,18(1):88-89; see also his recent paper on "WTO Anti-Dumping Agreement: A Case for its Review and Reform in the Light of Implementation Experience" presented at the Islamic Development Bank Seminar WTO DSM and AAD, Jeddah, 3-6 September 2000.

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Geneva, 19 – 23 February 2001

REPORT OF THE EXPERT MEETING ON THE IMPACT OF ANTI-DUMPING AND COUNTERVAILING ACTIONS

Held at the Palais des Nations, Geneva,
from 4 to 6 December 2000

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I. OUTCOME [1]

1. The Expert Meeting on the Impact of Anti-Dumping and Countervailing Actions was held in Geneva from 4 to 6 December 2000. The decision to organize this Meeting was taken in accordance with paragraph 132 of the UNCTAD X Plan of Action (TD/386), which states that "UNCTAD's work should relate first to analysis and, where appropriate, on the basis of the analysis, contribute to consensus-building on: impact of anti-dumping and countervailing duties actions". The following is the outcome of the Expert Meeting. Pursuant to the Trade and Development Board's decision taken at its twenty-fourth executive session, the outcome will be circulated by the secretariat to member States with a request for policy comments on the experts' recommendations. The responses of member States will be taken into account in the preparation of the secretariat documentation for the fifth session of the Commission on Trade in Goods and Services, and Commodities, to be held from 19 to 23 February 2001.

2. Individual experts, on the basis of the concrete experiences presented at the Meeting, put forward their views on the possible ways and means of addressing the issues and areas of concern to developing countries so that the adverse effects of anti-dumping and countervailing duty actions on trade, particularly that of developing countries, could be reduced. The following text summarizes their suggestions. Not all of the views were shared by all experts; the text is intended to reflect fairly the richness and diversity of the views expressed, rather than agreement.

3. Several experts and the background note prepared by the secretariat emphasized that anti-dumping and countervailing duty actions are legitimate measures permitted under GATT/WTO rules, and considered that the proposed changes should be seen in the context of their impact on investigatory practices and the ability to ensure fair trade.

Main issues identified

4. On the basis of national experiences, presentations of resource persons and the background note prepared by the UNCTAD secretariat (TD/B/COM.1/EM.14/2), the experts identified issues relating to anti-dumping and countervailing measures which might be addressed, as appropriate, in (a) future multilateral trade negotiations; (b) the current activities of the WTO Committee on Anti-Dumping Practices and its organs; (c) the WTO dispute settlement mechanism; (d) national policies of member States; and (e) the future work of UNCTAD and other relevant international organizations in this area, including technical assistance activities. The following views were expressed in the debate.

[1] As adopted by the Expert Meeting at its closing plenary meeting on 6 December 2000.

A. Dumping

Five per cent viability test

5. The 5 per cent viability test should be applied on a global basis for the like product. The investigating authorities should conduct a further review to determine whether the low domestic sales volume compared with the export volume was caused by the small size of the domestic market of the exporting country and might therefore serve as the basis for normal value. The per capita consumption of the product concerned should be taken into account.

Exclusion of sales below cost

6. The current 20 per cent threshold may not adequately reflect business realities. The practice of investigating authorities seems to suggest that where sales below cost represent more than 20 per cent of total domestic sales, such sales are systematically excluded and normal value is based on remaining sales above cost artificially and arbitrarily increasing normal values and dumping margins. To tackle this problem, the current 20 per cent cut-off could be increased, and authorities must respect the "reasonable period of time" as required by the Agreement on Anti-Dumping (AAD).

7. The weighted average normal value may not be less than the weighted average cost per unit.

Constructed normal value

8. Experience seems to suggest that manipulation of exporters' financial information may result in an increase in their dumping margins under certain circumstances. Article 2.2.2 of the AAD allows too much discretion and may lead to unreasonable selling, general and administrative expenses and profit calculations in certain cases. Therefore, the current provision should be clarified.

Fair and symmetrical comparison

9. In order to achieve a fair comparison, common rules must be established to obtain equal results based on the same set of data.

Credit cost

10. Actual credit costs should be accepted in normal value calculations even if they are not based on contractual arrangements.

Duty drawback

11. High standards of burden of proof are currently used in some jurisdictions to reject or minimize normal value adjustments based on valid duty drawback claims. Article 2.4 of the AAD should be clarified to ensure that drawback adjustments are based on prevailing business practices and realities.

Level of trade

12. Some countries define the difference in level of trade in a complicated manner, thereby imposing an unreasonable burden of proof on exporters. Also, countries do not provide proper information regarding the definition of level of trade. Rules on identification and quantification of level of trade adjustments are needed.

Exchange rate fluctuations

13. The absence of a definition of "sustained movement" in Article 2.4.1 is a matter of concern for countries with floating exchange rates. Short-term fluctuations and long-term trends in exchange rates should be clearly distinguished and the long-term trends should be defined as "sustained movement", which would normally imply a period exceeding 60 days for adjustment of export prices.

Exchange gains or offsets

14. While exchange losses are usually taken into account, exchange gains are frequently ignored on narrow, technical grounds, thereby inflating costs and minimizing favourable adjustments. Article 2.2.1.1 should be clarified so as to exclude consideration of both exchange gains and losses, or to ensure that exchange gains are included in the calculation of costs of production.

Zeroing (exceptions)

15. The three exceptions contained in Article 2.4.2 (purchasers, regions and time periods) are too broad and disproportionately benefit large economies. The exceptions must be tightened. Zeroing should not be applied in investigations or reviews.

Non-market-economy treatment

16. Non-market-economy provisions should be applied only against countries which meet the criteria in GATT Article VI, i.e. those which have a "complete or substantially complete monopoly of [their] trade and when all domestic prices are fixed by the State". Very few countries at present meet these criteria.

17. In cases where investigating authorities encounter difficulties in establishing normal value, for example for exports from countries in transition, they should ensure that the methodologies used are fair and predictable.

De minimis dumping

18. The practical impact of an increased *de minimis* dumping margin should be empirically researched. UNCTAD could undertake a study on this issue.

Cyclical industries

19. Given the fact that some industries are cyclical, the current treatment of sales below costs of production as set out in the AAD can result in a finding of dumping during periods of low capacity utilization. Solutions should be sought to avoid massive imposition of measures during such periods.

B. Injury

Basis of negligibility

20. Thresholds for excluding negligible imports from injury determinations should be based on market share rather than on share of total imports.

Negligible import volumes

21. The level of negligible imports should be increased to a level higher than the current 3 per cent on the basis of empirical research demonstrating a positive trade impact.

Cumulation

22. The cumulation of suppliers that individually meet the negligibility criteria, using the 7 per cent rule, should be revised or eliminated.

Captive production/definition of "industry"

23. The exclusion of captive production from injury analysis should not occur without proper justification.

Lesser duty rules

24. The lesser duty rule should be made mandatory and its application made subject to regular review. Some authorities have encountered difficulties in calculating the lesser duty.

C. Procedure

Back-to-back complaints

25. The repeated recourse to anti-dumping actions against the same product has been identified as one of the problems relating to the implementation of the AAD. The disciplines in this regard should be strengthened to preclude the initiation of any investigation for a period of 365 days from the date of termination of a previous investigation of the same product from the same country.

26. Petitions brought before the investigating authorities within 365 days should be examined with the utmost care.

Standing

27. When challenging standing, the burden of proof should not be on the exporters; rather, the national investigating authorities of the importing country should demonstrate that they have correctly determined standing in accordance with Article 5.4 of the AAD.

Sunset reviews

28. Anti-dumping and countervailing duty actions should not normally continue after five years. An anti-dumping duty should remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. The investigating authorities have been conducting sunset reviews in conformity with the spirit and legal requirements of the WTO Agreements.

Questionnaires

29. Replying to questionnaires, some of which extend to hundreds of pages, constitutes a major burden, particularly for small and medium-sized exporters from developing countries. Questionnaires should be as simple as possible, focusing only on the necessary information. Consideration should be given to the preparation of a standard questionnaire.

Language

30. The difficulties in, and the cost of, translating documents required as evidence in investigations should be taken into account by investigating authorities with a view to minimizing the burden on respondents. Translation difficulties should be given special consideration as a justification for extending the normal 30-day period for responding to questionnaires.

Independent bodies

31. National anti-dumping/countervailing duty administering or investigating authorities should function autonomously with respect to technical decisions.

Price undertaking

32. To enable exporters to continue to have access to the market, price undertakings should be accepted, if offered by exporters on terms that would remedy dumping or its injurious effects, as an alternative to anti-dumping duties.

D. Special concerns of developing countries

33. Anti-dumping actions, including the initiation of investigations that are subsequently determined to be unfounded, may often have a devastating effect on the economies and societies of developing countries since they cut off trade in crucial export markets. They often frustrate those countries' efforts to diversify their exports into new sectors of production. Anti-dumping actions may result in a diversion of investment away from developing countries to the major market countries. Anti-circumvention measures could result in countries which have made no contribution to material injury in the importing country being caught up in anti-dumping actions. Developing countries are particularly concerned that, upon the expiry of the Agreement on Textiles and Clothing, there could be a wave of anti-dumping actions against textile and clothing exports.

34. There is a need to make the best-endeavour provisions of Article 15 of the AAD operational. This could be accomplished by, *inter alia,* increasing the *de minimis* thresholds for dumping and injury to levels which would provide meaningful trade advantages for developing countries and eliminating cumulation of their exports. Increases of these thresholds to 5 per cent were suggested, but further empirical analysis should be undertaken to ensure that these levels are high enough to accord meaningful trade advantages to developing countries. Higher thresholds would also reduce the cost of defence against anti-dumping actions by developing countries as they would be automatically excluded in a greater number of cases. The possibility of recommending progressive duties in the case of developing countries should be explored in order to help the producers in those countries in realigning their production.

Cost of defence

35. Developing country exporters face serious difficulties in defending their interests against anti-dumping actions. They usually do not possess the necessary technical expertise, and lack the resources required for legal counsel in anti-dumping actions or in pursuing their rights under the WTO dispute settlement mechanism. These exporters require training in order to understand dumping issues so as to minimize the risk of anti-dumping actions against them.

Difficulties in application

36. Developing countries, which are the subject of dumping, face difficulties in applying anti-dumping actions. They lack the financial, technical and human resources to conduct investigations. As a result, many find themselves unable to defend their producers against dumped imports. They require technical and financial assistance to strengthen their administrations.

37. Dumped imports are a particular problem for African countries. They perceive that they are victims of increased dumping from outside the region; and they require assistance in addressing this problem. A solution should be sought for African countries.

Small economies

38. Technical assistance should take into consideration the specificities of small developing economies, such as a notable lack of financial, technical and human resources, and should provide for a practical approach to institution-building that could economize on investigation, administrative and other costs.

39. Given the size of the market and the strength of the local industries, the time taken by a local industry to lodge a complaint and for an anti-dumping investigation to be initiated may result in the death of the industry.

40. Small economies have few products for export and any anti-dumping actions against these products will destabilize the economy.

Countervailing duties

41. In assessing duty drawback systems in developing countries, aggregate evidence should be accepted when exporters are unable to identify individual inputs. Developing countries request that they be entitled to estimate the incidence of excise, sales and other internal taxes for refund without this being considered an export subsidy. The *de minimis* subsidy level for countervailing duty investigations should be increased from 2 per cent to 3.5 per cent for developing country exports.

II. SUMMARY OF DISCUSSIONS [2]

A. Presentations by experts on country experiences

42. Individual experts made presentations, in their own capacity, on experiences with the impact of anti-dumping and countervailing duty actions on the following countries: Philippines, China, Turkey, Cuba, Burundi, Venezuela, Pakistan, Malaysia, India, Russian Federation, Peru, Uruguay, Vietnam, Zimbabwe, Angola, Chile, Tanzania, Kenya, Mauritius and Republic of Korea.

Experience of the Philippines

43. In stressing the importance of fair trade and fair competition rather than increased trade, Philippines anti-dumping and countervailing duty (AD/CVD) laws aim at providing trade remedies to domestic industries. So far, many local industries have availed themselves of AD remedies to counteract unfair trade practices and CVD has not yet been used. To implement AD remedies, in-depth investigation (i.e. actual consultations, use of questionnaires, plant visits, overseas investigation, desk research, formal hearings) has been conducted. The sectors of imports that have been affected by Philippines AD actions are glassware, steel products, chemicals, cement, newsprint, etc. Parties affected have been Malaysia, Taiwan Province of China, Russian Federation, Republic of Korea, China, Thailand, etc. Government agencies responsible for conducting AD investigations have faced difficulties in getting the domestic wholesale price in the country of origin of the allegedly dumped product. The non-cooperation of some exporters as respondents to AD investigations has also had adverse effects.

44. The desire for developing countries to have easier and better access to developed country markets was emphasized.

Experience of China

45. As in the case of the Philippines, the expert from China emphasized the importance of fair competition. While the legitimate right of countries to use AD remedies to combat unfair trade is recognized, excessive reliance on or abuse of AD actions should be avoided with a view to reducing the negative trade impact of AD measures, of which China considers itself to be one of the worst victims; Chinese exports face a large number of AD measures, most of which have been imposed by China's major trading partners, i.e. the European Union and the United States. These actions, which involve exports worth tens of billions of US dollars, have become the major impediment to China's export trade and have worsened its trade pattern. Most of those measures are considered by China to be discriminatory, as the normal values of these AD cases were determined on the basis of the so-called "non-market economy" criteria of using "surrogate country" values. The achievements of China's market economy reforms have been disregarded.

[2] Prepared by the UNCTAD secretariat.

In order to minimize the impact of AD actions on world trade, discriminatory practices should be abandoned. Transparency should be increased in the conduct of AD investigations. The "lesser duty rule" should be applied as mandatory. The "sunset clause" should be strictly enforced. China started to use AD actions in 1997. So far one case has been completed and four cases are under investigation. The main products involved in these cases are newsprint, steel products and polyester film.

Experience of Turkey

46. The expert from Turkey highlighted several problems arising in the context of AD investigations such as differences in accounting systems; difficulties in filling in questionnaires issued by the investigating authority; the cost of defending interests (fees for legal consultants etc.); and insufficient technical expertise on the part of the governmental authority. Regarding language problems, i.e. the necessity for exporters to provide translations of all necessary documentation, additional time should be provided in that connection. In addition, determination of AD margins should be undertaken in a realistic manner by applying a multiple approach on the basis of realistic business conditions and cost estimations. Such a realistic application of AD/CVD would be conducive to predictability in the multilateral trading system and to stable market conditions.

Experience of Cuba

47. Cuba's experience relates to antidumping measures applied by Canada to exports of steel from the Republic of Korea, Turkey and Cuba. In this context, significant problems arose with regard to Article 3.3 of the Anti-dumping Agreement (ADA) under which a cumulative evaluation of the effects of dumped imports from more than one country may be undertaken. Firstly, Article 3.3 states that authorities should determine that the margin of dumping from each country is not *de minimis*. In the case of Cuba, the margin of dumping was determined under non-market economy treatment, which, according to Cuba, should not have been applied. Secondly, Article 3.3 states that authorities should determine that the volume of imports from each country is not negligible. In the case of Cuba, exports have nearly always been under 3 per cent of Canada's imports, but in the period chosen by the Canadian authorities, Cuban exports were at a level of 3.4 per cent. Thirdly, under Article 3.3, authorities should determine that a cumulative assessment is appropriate in light of the conditions of competition between the imports and the domestic like product. This was not taken into account in the case of Cuba. Finally, there is a need to reformulate Article 15 on special and differential treatment in order to make its provisions operational and binding.

Experience of Burundi

48. Burundi is facing difficulties in the application of AD measures by itself and by its trading partners. Burundi lacks institutional capacity and expertise to carry out AD investigations. Subsidies applied by its neighbouring countries have hindered its exports, but Burundi's limited

capacity has not allowed it to defend its interests effectively. Increased provision of technical assistance, as well as the simplification of rules and procedures, would be necessary for Burundi to benefit effectively from AD/CVD provisions of the WTO.

Experience of Venezuela

49. The 1992 Venezuelan law on unfair practices in international trade was adopted with the aim of preventing dumped imports or imports of subsidized products from having a negative effect on domestic industry. The national body dealing with matters relating to the operation of the antidumping agreements is the Anti-dumping and Subsidies Commission (CASS). CASS is an autonomous body with the authority to initiate and conduct investigations, as well as implement anti-dumping measures. While CASS helps to promote trade by ensuring fair competition, Venezuelan legislation encourages the competitiveness of domestic industry by providing for the application of a "lesser duty" rule. Since its creation, CASS has initiated and completed 18 investigations. Venezuela's exports have faced a similar number of cases abroad. The major problems and challenges faced by Venezuela could be summarized as follows: (a) it was difficult for Venezuelan companies to embrace the mechanism provided for in the AD agreement; meeting the high costs involved and supplying the required information were major problems; (b) a major challenge for future multilateral trade negotiations could be the revision of the antidumping and subsidies provisions to clarify grey areas and to reduce the margin of discretion in the administration and application of laws. Work towards achieving more transparency in the imposition and maintenance of AD duties is essential in this regard.

Experience of Pakistan

50. Pakistan has limited experience in the area of AD/CVD. Its exports, mainly textiles, have often been subject to AD measures in the major markets (i.e. cotton yarn in Japan and grey fabrics and bed linen in the EU). The issue of sales below cost has been most apparent in the cotton-based industry, where cotton is a local input and whose prices depend upon erratic supply. In the case of both grey fabrics and bed linen, the AD proceedings were initiated by the EU in addition to quota restraints. Pakistan's experience has been that its export firms have not been able to defend the cases properly. This has been due mainly to the lack of comparable international accounting systems and difficulties faced by export firms in filling out the questionnaires, and many firms selected for investigation could not respond and did not have the technical and financial means to defend themselves. As a result, dumping margins have been assessed at higher rates. Furthermore, the repeated initiation of investigations on the same products have had severe trade-chilling effects on Pakistan's exports. Pakistan also fears that the removal of textile quotas in four years' time could lead to a new wave of AD actions. The expert suggested that, for resource and agriculture-based products (such as cotton-based products), a longer average cost cycle needs to be provided to bring the costs closer to reality.

Experience of Malaysia

51. Malaysia's legislation governing AD/CVD actions are the Countervailing and Anti-Dumping Duties Act of 1993 and the Countervailing and Anti-Dumping Duties Regulations of 1994 as amended upon the entry into force of the Uruguay Round Agreement. Since 1995, five AD actions have been initiated and definitive duties imposed on four mostly paper products - self-copy paper (SCP) or non-carbon-required paper (NCR), corrugated medium paper (CMP) and plaster/gypsum boards. Exporters from nine countries or groupings were affected by Malaysian AD actions, and six were subject to the imposition of definitive duties, including Australia, EU, Japan, Poland and two countries from the ASEAN region. The range of AD duties imposed was from 0 to 114 per cent. The trade impact analysis showed that, depending on the products and the AD duties imposed, the impact of Malaysian AD actions varied but generally had a negative impact on trade. As to Malaysian exports subject to AD/CVD measures, 16 products such as steel, electrical and chemical equipment, polymers, rubber, wood, textiles and bicycles were subject to AD/CVD actions by the EU, South Africa, the United States, Australia, Singapore, the Republic of Korea and India. Those actions have had negative impacts on Malaysian exports in almost all cases.

Experience of India

52. The Indian expert said that Indian exports such as fabrics often encounter discriminatory AD measures in major developed markets in the form of "back-to-back complaints" which severely harass its exports. Little consideration has been given to provision of special and differential treatment by those countries applying AD measures.

53. India is also a user of AD measures but has applied them rigorously and in a conservative manner. Although India enacted its AD legislation in 1982, the first case was not brought until 1992. The institution of the AD system in the country was not the result of intended policy, but of market reality. In imposing AD duty, India has applied the lesser duty rule in its 59 AD cases, and only in two cases did the final determination fail to confirm the existence of AD and material injury (in contrast to the developed countries' record of 50 per cent of cases not resulting in an AD finding). Lower domestic prices have been applied in the calculation of dumping margins, and even if dumping is found, AD duty has been imposed in a strictly time-bound manner.

54. In the light of Indian practice, developed country practices such as back-to-back application of AD measures clearly go against the disciplines established under the ADA and severely hinder access to their markets. The application of AD measures has also been facilitated by the weakness in the multilateral judicial disciplines ("standard of review" of Article 17.6 of the ADA). AD duties applied to Indian exports are particularly harmful in such sectors as textiles, chemicals and steel, and AD actions have even hampered exports involving small quantities of goods. The situation of double-jeopardy exists for textiles. Suggestions were made to increase the *de minimis* dumping margin and market/import share, to provide notice in advance when AD

action is to be imposed on developing country exports and to apply it gradually on a step-by-step basis so as to allow a "breathing period".

Experience of the Russian Federation

55. The expert from the Russian Federation said that the Russian Federation is greatly concerned with the various restrictions applied by its trading partners against Russian exporters. In the period 1992-2000, the number of such restrictions increased from 13 to 113. According to Russian estimates, Russian exporters lose up to 1.5-2 billion US dollars annually due to these restrictions. In this regard, Russia continues to be one of the countries facing the greatest discrimination in international trade. Anti-dumping measures are the most prominent type of restriction applied against Russian exporters. There are 65 registered anti-dumping measures involving Russian export products. The largest victim has been Russian steel exports (85 per cent of all anti-dumping measures). Other affected exports include chemicals, paper, uranium and glass. Thirty countries are applying anti-dumping measures against Russian exporters, and the bulk of such measures are registered in the European Union, the United States, India, Canada, the Republic of Korea, Peru, Poland, Ukraine and the Philippines. In this context, it should be noted that the increase of anti-dumping measures against Russian exporters can be partly explained by the fact that Russia is not yet a member of the WTO; and Russian economic reforms, including liberalization of the foreign trade regime and the opening up of the Russian domestic market, are not properly recognized by Russia's trading partners, including some developing countries, which still view Russia as a non-market economy in the absence of any clear economic criteria on this matter. The criteria mentioned in the ADA and GATT 1994, i.e. monopoly of foreign trade and setting of all prices by the State, are outdated and do not reflect realities. Accession to the WTO *per se* and support of this process by WTO members should mean in itself that an acceding country is a market economy.

56. For its part, Russia had not yet applied anti-dumping or countervailing measures, although relevant national legislation was adopted in 1998.

Experience of Peru

57. National legislation regarding dumping, anti-dumping and countervailing measures is set out in two Decrees. In addition, with the creation of the Andean Community, two decisions were adopted in 1999 with the aim of regulating dumping and subsidies in the five Andean Community countries. The body in charge of protecting domestic industry from the effects of dumping and unfair competition is the Inspectorate for Dumping and Subsidies *(Comision de Fiscalizacion de Dumping y Subsidios)*. The majority of investigations on dumping and subsidies initiated by Peru involve Latin American countries, the reason being that these are Peru's major trading partners. The predominant sectors investigated are food processing and beverages, metals and electrical appliances, which are the main productive sectors of Peruvian industry. The major problems in the implementation of AD measures relate to the lack of financial resources to hire lawyers, the lack of time to carry out investigations, and problems concerning translation. There

is also a need to clearly define the concept of non-market economy treatment and what constitutes "reasonable profit deduction". There should also be more precise guidelines on "the lesser duty" rule. The *de minimis* rule should be increased and the special and differential treatment provisions should be made more effective. The expert from Peru was of the opinion that AD duties should be considered as "exceptional duties" and applied in accordance with technical and justified criteria. It is necessary to work towards achieving a more transparent and predictable AD mechanism.

Experience of Uruguay

58. Since the Uruguay Round of Multilateral Trade Negotiations, Uruguay has established domestic regulations in line with the agreements on trade policy. Anti-dumping regulations were set out under decree 142/996 in 1996 and safeguard provisions under decree 2/99 in 1999, and a proposal by the Ministry of Agriculture and Fisheries on subsidies and countervailing measures is under study by the Ministry of Economy and Finance. Since 1996, the National Manufacturing Office has launched two anti-dumping investigations, one into US imports of synthetic fibres, the other into sunflower oil from Argentina. In both cases, the injury and causal link were proven (no AD duties, however, were imposed in either case). The main problems identified by Uruguay concerning anti-dumping are that domestic producers affected are not always prepared to defend themselves from unfair trade practices caused by their lack of technical knowledge and their unwillingness to bear the costs (in the case of small and medium-sized firms due to the lack of financial resources). There is also the issue of being able to demonstrate injury. In addition, Uruguay's main exports are agricultural products, whose markets are distorted by the constant use of subsidies by developed countries. For this reason, the expert from Uruguay stressed the importance of reviewing the issue of dumping.

Experience of Viet Nam

59. Viet Nam's economy is in transition to a market economy and its negotiations on accession to WTO are in progress, but it has encountered difficulties in terms of trade disputes relating to AD/CVD actions which threaten the survival of some key domestic industries. The lack of legislation and of human and financial resources and experiences, together with non-WTO membership, have all aggravated its position in trade disputes. Questions arising in this regard relate to the kind of international instruments that are available for Viet Nam to tackle these problems and safeguard domestic industries, and the provisional measures that could be applied to redress the situation given all difficulties involved.

Experience of Zimbabwe

60. Zimbabwe has never been subject to AD actions by its trading partners. However, these issues remain relevant to Zimbabwe as it faces possible dumped imports from its neighbouring trading partners in the context of regional economic integration under the South Africa-EU Free Trade Agreement, the SADC Trade Protocol and the COMESA Free Trade Agreement. The

Tariff Commission of Zimbabwe is the authority in charge of AD investigations. Zimbabwe brought its national legislation into conformity on the occasion of the country's 1994 WTO Trade Policy Review. The concepts of minimum dumping margin and sunset clause have since been introduced into its legislation. However, Zimbabwe is still experiencing difficulties in complying with its international obligations in this area. Technical assistance has been requested from the WTO and SADC in this regard. Particular problems facing Zimbabwe include: lack of skills and expertise in responsible authorities (Tariff Commission, Attorney General's Office, Department of Customs); the reluctance of the private sector to pursue cases; lack of institutional capacity; and lack of expertise in defending its interests in possible AD litigation by major partners.

Experience of Angola

61. Formally a centrally planned economy upon its independence in 1975, Angola had no need for trade remedy measures. The situation has not essentially changed in the context of economic opening and trade liberalization, as the country's domestic industry remains quasi-inexistent, except for petroleum and diamonds. However, recently there emerged awareness as to possible cases of dumped or subsidized imports. Angola has had difficulty in this regard, particularly in measuring commercial transactions, due to the weak institutional capacity of its customs administration; and in undertaking AD/CVD investigations owing to lack of financial and human resources and expertise. Capacity building is key, and technical assistance is requested from UNCTAD.

Experience of Chile

62. Since 1996, Chilean exporters have faced 13 anti-dumping and subsidy actions affecting wine, salmon and trout. The case of Chilean salmon exports to the United States is illustrative in this regard. The US ITC determined that Chilean exports of salmon were being dumped. The margin of dumping was not arrived at by comparing the export price of salmon with the comparable price in the Chilean domestic market. This was because sales in the Chilean domestic market were estimated to be less than 5 per cent of salmon exports to the United States and therefore were not considered to be of sufficient quantity to determine the normal value. The expert from Chile expressed the view that this 5 per cent criterion should be eliminated and replaced by a criterion that compares per capita consumption of exports and domestic sales. Alternatively, it could be replaced by any other criterion weighted according to the size of the economy.

Experience of the United Republic of Tanzania

63. In the context of the significant increase in the country's trade as a result of the trade liberalization effort, sectors such as sugar and textiles have been severely affected by dumped imports. While material injury is perceived to exist as a result of such dumped imports, Tanzania has difficulty in pursuing investigations and determining dumping and injury. As an LDC, it lacks capacity in terms of resources and expertise in initiating AD actions. The AAD should be

made more flexible for the LDCs, and the special and differential treatment provisions should be more LDC-friendly. Technical assistance, in particular in defending LDCs' interests in possible AD cases brought by their trading partners, should be provided by international agencies.

Experience of Kenya

64. Kenya has a legal basis for AD and CVD measures (sections 125 and 126 of the Customs and Excise Act), but has never applied them owing to the complexity of the rules, the high financial cost involved, and the technical difficulties in pursuing investigations effectively (i.e. collection of factual information in determining the normal export price). Both the Government and the private sector suffer from limited capacity. The expert from Kenya considered that the process of investigation should be simplified: the determination of injury is too complex and costly. In addition, WTO rules could be strengthened in terms of the operationalization of Article 15 of ADA, as well as the dispute settlement body standard of review. The cost of defending its interests against foreign AD investigations is another issue of importance for Kenya. In this regard, financial and technical assistance is needed from donors and international agencies, most notably from UNCTAD.

Experience of Mauritius

65. Mauritius has no national experience in conducting AD actions and lacks the capacity to pursue investigations, while domestic industries are increasingly excluded from markets by cheaper imports. Mauritius has a concern about dumping practices of neighbouring countries members of SADC and COMESA. The expert from Mauritius was of the view that national experiences presented at the meeting should be adapted to the local context, while practical solutions should be tailored to each developing country. In this context, small economies, like Mauritius, face particular and unique problems. The same tailored approach should be adopted with regard to delivering technical assistance for developing countries.

Experience of the Republic of Korea

66. During the 1990s, the Republic of Korea was among the top three countries affected by AD/CVD measures, and the most targeted products were steel, chemical products, electronic/electric products and textiles. Confronted with the difficulties of what it regarded as persistently arbitrary and inconsistent application and interpretation of AD rules, the country found it impossible to resort to the WTO dispute settlement body for the interpretation and clarification of individual issues. The WTO dispute settlement procedures also entail a tremendous administrative and financial burden for the Government. On the other hand, the Republic of Korea has also initiated more than 50 AD cases against imports from other countries since 1987. In order to improve the AD/CVD system, the following issues were suggested for consideration in the future: the 5 per cent test rule, sales below cost of production (including both cyclical industry and financial expense), minimum volume of profitable sales, the need to clarify

imprecise expressions (such as "ordinary course of trade", "appropriate third country", "start up period", "level of trade", etc.). reasonable profit margin in constructed normal values, price comparison, credit expense, duty drawback, *de minimis* margins, standing, negligible imports, lesser duty rule, sunset review, and special and differential treatment. In particular, there is a need to ensure that the same data set should lead to the same conclusion as to the existence or not of dumping, as well as dumping margins.

B. Presentations by resource persons

Mr. William H. Barringer (Willkie Farr and Gallagher, Washington D.C.)

67. Several categories of adverse impact that anti-dumping and countervailing measures have can be identified: (a) AD and CVD measures prevent manufacturers from pursuing the same commercial strategies in export markets as they are permitted to pursue in domestic markets (such as selling at lower prices to large-volume purchasers, selling below cost in down cycles or product cycle pricing); (b) the cost of defending AD/CVD cases is very high (in the United States, an average AD case costs between $500 000 and $1,000,000 to defend). Under such circumstances, small players do not have the resources to defend their interests adequately; (c) most AD cases exclude a product from a market for a number of reasons such as the uncertainty of liability or the fact that margins are not related to injury (lesser duty rule); (d) AD measures tend to distort investment decisions and encourage investment in larger markets; (e) with cumulation rules, AD actions have a disproportionate impact on small suppliers. The negative impact of AD measures is so extreme that most targeted companies would probably prefer WTO-illegal measures such as minimum prices and quotas to be used instead of AD measures as at least they had the virtues of certainty and did not allow exclusion from markets. Fine-tuning of the rules (e.g. how dumping and injury are determined) would not eliminate the major trade-distorting effects of AD measures. A more fundamental reform is needed. However, several specific problems may be solved in the areas of asymmetric price comparison, sales below cost/ordinary course of trade, compensation standard, price undertakings and the sunset provisions. The adverse effects of CVD measures are less significant but still important, for example in terms of impacts on development strategies and programmes. Regarding specific AD actions against steel products, it is questionable, if such measures are capable of addressing the global problem of steel overcapacities. Steel is considered a politically important sector, particularly in the United States. In this context, there has been a major shift in the United States from voluntary export restraints to AD actions in this sector.

Mr. Edwin Vermulst (Vermulst, Waer & Vehaeghe, Brussels)

68. For the existing AD rules, the stringent application of the rules would be most important. As developing countries are no longer just victims of AD/CVD measures, their interests should be carefully considered. Developing countries should focus their limited resources on some of the issues of special importance based on their real impact, such as: (1) sales below cost; (2) constructed price; (3) constructed export price; (4) fair comparison of prices; (5) non-market

economy criteria; (6) AD/CVD duty drawback scheme. On the question of the standard of review (Article 17.6 of the ADA), which has been heavily criticised, the situation now turns out to be less disadvantageous than anticipated. The review standard actually applied in AD cases does not appear to be any different from the one exercised in other dispute settlement cases. Developing countries should not, therefore, spend negotiating currency on it. Nor should negotiating energy be wasted on the issue of reimbursement of AD duties. Such a reimbursement could cause substantial difficulties, and countries should keep in mind that they might find themselves on the other side of the table as well.

69. With regard to EU AD/CVD cases over the last five years on textiles, various problems arising in this context such as the *de minimis* threshold, back-to-back investigations, level of trade, credit costs and duty drawback were discussed. It was the view of the resource person that an increase in the *de minimis* dumping margin from 2 to 5 per cent - as sometimes suggested – would not have had a major impact. It is therefore not recommended to spend negotiating energy on such an increase. Rather, negotiators should focus on tightening substantive dumping margin calculation methods. An increase in *de minimis* imports (or a market share test) also seems promising. As far as subsidies are concerned, the concept of specificity needs to be defined, while the duty drawback provisions in Annexes II and III of the Agreement on Subsidies and Countervailing Measures need to be loosened for developing countries. The burden of proof with respect to standing should not shift to the respondent.

Mr. Munir Ahmad (International Textile and Clothing Bureau)

70. The total volume of textile imports in the EU subject to AD duties is significant, with the major target remaining Asian exporters, most notably India, Pakistan and Egypt, whose share has decreased significantly since 1995. It has been ascertained that, when an AD investigation has been initiated but has not resulted in the imposition of AD duties, a notion of nullification and impairment can be made applicable. While, under the ATC, no AD action can be taken within quota, given the elimination of all quotas in 2005, compliance with the sunset clause is of paramount importance. In particular, in the expected event of a sharp increase in imports in textiles and clothing after 2005, which would cause a sharp drop in prices, it can be foreseen that AD action will be taken much more frequently. Two options are possible in addressing the issue: firstly addressing technical issues in current AD rules; and secondly, agreeing on a moratorium in the course of which products previously subject to quotas would not be targeted by AD action.

Mr. Dean Spinanger (Kiel Institute of World Economics)

71. Given the increases in AD measures in recent years, a tragedy is now developing in which particularly the United States and the EU have written the script according to which developing countries now enact AD rules. While the EU and the United States are continuing to be the major users of AD, developing countries around the world are now using AD measures more and more. Overall, whereas actions by industrialized countries exceeded those by developing countries in the early 1990s by roughly 250 per cent, since then developing countries have taken over the

lead. As far as industrialized countries are concerned, most of their AD measures are still concentrated on developing countries, whose share has increased during the 1990s from 63 per cent to 75 per cent. The developing countries, on the other hand, have been initiating AD measures against other developing countries. Over the entire decade of the 1990s, developing countries targeted almost 70 per cent of their AD measures at other developing countries. Concerning the countries hit by AD measures, the EU was most affected in the 1990s, followed by China, the CIS countries and the United States. Whereas the number of AD measures initiated against the EU, China and the United States decreased over the period, it was the economies in transition which showed noticeable increases in AD measures. If the AD measures are looked at in terms of the amount of imports actually registered in the countries concerned in the time period in question, then it becomes quite obvious that the impact of these measures is far greater in the transition economies. However, other countries such as China and the Republic of Korea likewise exhibit a large impact coefficient. The conclusion can be drawn that the Uruguay Round tariff reductions caused countries to revert to AD or to other contingent protection measures. It is quite conceivable that the complacency of industries that were highly protected before the Uruguay Round has induced Governments to enact contingent protection. The loose wording of the ADA leads to the situation where it is simply an "easy way out" to revert to AD actions.

C. Summary of the comments made at the Expert Meeting

72. In the discussions on country experiences and presentations by resource persons, as well as under item 4, the comments set out below were made.

General comments

73. While noting the irrelevance of the North-South divide in the area of AD and the fact that developing countries have increasingly used AD rules, some experts were of the view that attention should be given to improving the general rules applicable to all countries, irrespective of level of development (such as Article 17.6 of the ADA regarding the legal approach to be adopted by the panel for the determination of dumping and the lesser duty rule). Others said that the major thrust of views presented highlighted the need for the more stringent application of general rules on AD.

74. Several experts pointed to the fact that the impact of AD is disproportionately severe for developing countries, where exporters are often SMEs. In emphasizing the problem of persistent and repeated use of AD actions ("back-to-back complaints"), some experts said that the issue is of interest to other target countries as well and thus a communality of interest exists. They also raised issues such as 5 per cent rules, sales below cost, lesser duty rules, adjustment, cumulation rules, special and differential treatment, and identification of injury. The issue of sales below cost may need a special provision specific to such products as agricultural products.

75. One expert said that AD actions have become a major factor in deciding the location of FDI in EU and US markets.

76. It was pointed out that difficulties arising from the complexity and technicality of anti-dumping regulations call for fairer and clearer rules. Developing countries have to accept the current rules in order to be admitted to the WTO. Problems faced by developing countries often relate to the administration of AD/CVD rules, rather than to the rules themselves.

Special and differential treatment

77. Given the fact that Article 15 of the ADA remains a best-endeavour clause, many experts called for the operationalization of this Article and the improvement of the special and differential treatment provisions (in particular increases in *de minimis* margins and criteria for determining negligibility of imports). It was suggested that a study could be undertaken by UNCTAD to measure the impact of various changes in *de minimis* thresholds.

LDCs and African countries

78. With regard to the LDCs' perspective in the area of AD/CVD and the various difficulties experienced by those countries, one expert suggested that technical assistance could be provided upon request to assist the countries concerned in instituting and administrating AD legislation.

Non-market economy criteria

79. On the issue of "non-market-economy" treatment, several experts said that very few countries at present meet the criteria set out in Article VI of GATT 1994, and clear guidelines need to be discussed or developed.

80. However, another expert pointed out that non-market-economy status has been made necessary in AD investigations as the latter rely heavily on the assumption that prices and costs are determined by market forces. She reminded the Meeting that, if such an assumption did not stand, no AD investigation would be possible and that, therefore, a clearer rule, rather than the elimination of the rule, would be needed.

81. This view was supported by another expert in view of the difficulty in applying non-market-economy status in some cases where there exists a proliferation of state monopolies and price controls. He suggested that the definition should be changed and clarified. One expert stressed that the non-market-economy criteria, taken together with the subjective methodology applied in calculating price, has often led to higher AD duties.

Specific comments

82. On sunset review, one expert highlighted the fact that 32 out of 77 AD cases brought are currently under review by his authorities, which in his view is a sign of effective compliance with

the ADA by the Government. He also pointed out that special and differential treatment has been applied in the form of a phase of practical investigation of AD action.

83. On lesser duty, one expert recalled that ADA Article 9 makes its application discretionary and not mandatory. However, several exports highlighted the need to make the application of lesser duty rules mandatory. One expert said that the EU also applies a "public interest text" in adopting lesser duty rules so as to measure the overall impact of a proposed AD duty on the economy as a whole.

84. Several experts suggested the need to explore ways and means of addressing the expected increase in AD applications against textile products after the expiration of the current quota system under the Agreement on Textiles and Clothing.

85. Noting national experiences presented, one expert acknowledged that the ADA is difficult to implement, especially for developing countries, pointed to the existence of profound problems entailed in AD action, and observed that a certain bias exists in national AD legislation in terms of determining dumping.

86. In highlighting the disproportionate impact of AD actions on SMEs of developing countries, one expert said that this is mainly due to the enterprises' small production and export capacity and limited diversification (e.g. cut flowers from Columbia, crude oil from Venezuela). Commodity-type products sold at world prices are often the target of AD action by major markets, and small and developing countries cannot afford the cost of such action.

87. One expert raised issues of "sales below cost" and 3 per cent import thresholds for negligible import volumes and urged that a specific rule be applied for technology products and that the 3 per cent criteria be increased to 5 per cent.

88. One expert said that the question of sales below cost should be considered in the broader context of symmetric and fair price comparisons and cautioned against too lax an application of sales below cost. The importance of uniform rules in cost calculation was underscored.

89. Concerning the adjustment issue, one expert emphasized that the burden of proof should be born not by the exporter but by the investigating authority.

90. Commenting on the 5 per cent test for sales in domestic markets, one expert stressed that low levels of domestic consumption should be taken into account.

91. One expert stated that the issue at stake on the question of cost is not the ADA but the way it is implemented. On cumulation, he said that market share, not import share, should be the bottom line for determining 3 per cent negligibility for small suppliers.

92. Several experts agreed on the need for uniform methodology in the calculation of cost and thus dumping margins. Consistent and coherent rules would thus be important. In this regard EU AD rules are positive in that they automatically and consistently lead to the application of the lesser duty rule, thereby producing predictability in the system.

III. ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

93. In accordance with the decision of the Trade and Development Board at its twenty-fourth session, on 12 May 2000,[3] the Expert Meeting on Anti-Dumping and Countervailing Actions was held at the Palais des Nations, Geneva, from 4 to 6 December 2000. The meeting was opened on 4 December 2000 by Mr. Carlos Fortin, Deputy Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

94. At its opening meeting, the Expert Meeting elected the following officers to serve on its Bureau:

Chairperson: Ms. Margaret Liang (Singapore)

Vice-Chairperson-cum-Rapporteur: Mr. Roberto Corona Guzman (Mexico)

C. Adoption of the agenda

(Agenda item 2)

95. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in document TD/B/COM.1/EM.14/1. Accordingly, the agenda of the Meeting was as follows:

1. Election of officers

2. Adoption of the agenda

3. The impact of anti-dumping and countervailing duty actions on the trade of member States, in particular developing countries

4. Main issues and areas of concern that need to be addressed in the light of concrete experiences presented by national experts

5. Adoption of the outcome of the Meeting

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[3] See Report of the Trade and Development Board on its twenty-fourth session (TD/B/EX(24)/3), paragraph 46 and annex III.

D. Documentation

96. For its consideration of the substantive agenda items (items 3 and 4), the Expert Meeting had before it a background note by the UNCTAD secretariat entitled "Impact of anti-dumping and countervailing duty actions" (TD/B/COM.1/EM.14/2).

E. Adoption of the report

(Agenda item 5)

97. At its closing meeting, on 6 December 2000, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting, under the authority of the Chairperson, to include the outcome adopted by the Meeting (see chapter I) and the summary of the discussions (see chapter II).

Annex

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the Meeting:

Aleria
Angola
Argentina
Austria
Benin
Bolivia
Brazil
Burundi
Cameroon
Chile
China
Comoros
Costa Rica
Cuba
Czech Republic
Democratic People's Republic of Korea
Dominican Republic
Egypt
El Salvador
France
Hungary
India
Indonesia
Israel
Italy
Japan
Kazakhstan
Lithuania
Madagascar
Malaysia
Mauritius
Mexico
Mongolia
Morocco
Nepal
Nicaragua
Nigeria
Pakistan
Panama
Paraguay
Peru
Philippines
Republic of Korea
Russian Federation
Saudi Arabia
Slovenia
Spain
Sri Lanka
Thailand
Togo
Tonga
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Viet Nam
Yemen
Zimbabwe

* For the list of participants, see TD/B/COM.1/EM.14/INF.1.

2. The following intergovernmental organizations were represented at the Meeting:

Arab Labour Organization
Commonwealth Secretariat
European Community
International Textiles and Clothing Bureau
League of Arab States
Organization of the Islamic Conference
South Centre

3. The following international organization was represented at the Meeting:

World Trade Organization

4. The following non-governmental organizations were represented at the Meeting:

Special Category

International Chamber of Commerce
European Chemical Industry Council
World Federation of United Nations Association

5. The following specially invited persons attended the Meeting:

Mr. William H. Barringer, Willkie Farr and Gallagher
Mr. Peter Clark, Grey Clark, Shih & Associates, Ltd.
Mr. Gary N. Horlick, O'Melveny & Myers LLP
Mr. David Palmeter, Powell, Goldstein, Frazer & Murphy LLP
Mr. Dean Spinanger, Kiel Institute of World Economics
Mr. Edwin Vermulst, Vermulst, Wear & Verhaeghe

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